United States Court of Appeals

for the Second Circuit

APPENDIX

77-7174

77-7174

UNITED STATES COURT OF APPEALS
FILED
AUG 8 1977
H. DANIEL FUSARO, CLERK
SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B P/S

FRANCES JOY CAPERS, et al.,

Plaintiffs-Appellants,

against

LONG ISLAND RAILROAD, et al.,

Defendants-Appellees.

On Appeal from the United States District
Court for the Southern District of New York

JOINT APPENDIX

VOLUME I
Pages A-1 -- A-263

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PAGINATION AS IN ORIGINAL COPY

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* This document, although not part of the Record on Appeal stipulated to by the parties, was before the Court below and is reproduced herein at the request of the appellee.

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UNITED STATES DISTRICT COURT

Jury demand date:

72 CIV. 3168

C. Form No. 106 Rev.

JUDGE GAGLIARDI

TITLE OF CASE

Frances Joy Capers, Vivian Wright, Marshall Jackson, Edward Harris, Ernest Brown, John Diggs, Charles Allen, Kenneth Morris, James Van Ness, Albert Stroman and Howard Outerbridge, each individually and on behalf of all others similarly situated,

Plaintiffs,

- v -

Long Island Railroad, a corporation;

Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated association;

Sunrise Lodge #90, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated association;

Local 0177, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated assocation;

Transportation-Communication Division, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated assocation;

Brotherhood Railway Carmen of America, an unincorporated association;

Local 886, Brotherhood Railway Carmen of America, an unincorporated association;

International Association of Machinists and Aerospace Workers, an unincorporated association;

For plaintiff:

~~JACK GREENBERG~~
~~10 Columbus Circle~~
~~New York N.Y. 10019~~
WHITE&CASE
14 Wall St.NY REctor 2-1040

Deft: Elkind&Lampson ,122 E.42nd St.NY10017 986-4921

Deft George M.Orben
Jamaica Station,Jamaica,NY11435
(LI Railroad)

Deft Haskell Wolf
600 Old Country Rd.Garden City,NY
11533- 274-0254(Deft.LIRR)

For defendant:
REILLY, FLEMING & REILLY
1414 Avenue of the Americas,
N.Y.C. N.Y. 10019

David J. Fleming
1414 Ave. of the Americas
N.Y.C. 10019 759-[illegible] for certain union defts.

REilly,Fleming&Reilly
1414 Ave.of Americas,NY10019
Local Lodge 691,Railroad Yardmasters of America)

White &Case
605 Third Ave.NY10016 MU 2-6077

DATE	NAME OR RECEIPT NO.	REC.	DISB.
[illegible]	NAACP.	15 —	
[illegible]	[illegible]		15 —

Witness fees

Depositions

tion arose at:

BEST COPY AVAILABLE

Frances Joy Capers, et al vs. Long Island Railroad et al 72 CIV. 3168

JUDGE GA

DATE	PROCEEDINGS	Date Order or Judgment Noted
25-72	Filed complaint and issued summons.	
17-72	Filed Amended Complaint issued summons.	
17-72	Filed pltffs' first interrogs. to deft. Long Island Railroad.	
	Filed [illegible] (copy)	
18-72	Filed pltffs First Interrogatories to deft. Long Island Railroad., with Marshals proof of service.	
18-72	Filed summons with marshals return. Long Island Railroad Jamaica, N.Y. 8-10-72 SERVED:) Unable to serve. Brotherhood of Railway, Airline Steamship Clerks Freight Handlers, etc.	
13-72	Filed amended summons with marshals return : Served Brotherhood of Railway Airlines, Freight Handlers, etc, Served 9-5-72 Served : United Transportation Union 8-24-72 Served International Association of Machinists and Aerospace Workers., 9-6-72 Served Local 754 Intl Assoc of Machinists etc. 9-6-72 Served: Brotherhood Railway Carmen of America. 8-23-72.	
25-72	Filed defts Stipulation to extend or otherwise move against amended complaint, herein as extended until the 10-11-72. So ordered, Cagliardi, J.	
26-72	Filed pltffs first interrogatories to deft Long Island Railroad	
21-72	~~Filed Affidavit of Lynne R. Stern, Jr. in support of motion for prel. inj.~~	
21-72	~~Filed Reply memorandum in opposition to motion for pre. inj. (for defts. Benson Mechanical Corp and Blue Plate, Inc.)~~	
7.1.72	Filed Pltffs. Response to dfts. reply Memorandum.	
Nov 6-72	Filed Affidavit of Deborah M. Greenberg, in opposition to the Motion to dismiss of Deft L and Machinist Labor organizations.	
Nov21-72	Filed reply Memorandum of defts Brotherhood of Railway and Airline Clerks and Brac Locals 90 and 0177 in support of their motion to dismiss the amended complaint, or in the alternative for summary judgment.	
Nov21-72	Filed Answer of defts Brotherhood of Railway and Airline Clerks and Brac Locals Nos. 90 and 0177 in opposition to motion of pltffs to permit this case to be maintained as a class action.	
Nov21-72	Filed memorandum of points and authorities in support of opposition to motion of pltffs to permit this case to be maintained as a class action.	
Nov20-72	Filed Affidavit of Joseph T. Gatti who state that on Nov 17th, 1972 did serve the within memorandum and Answer on Deborah Greenberg Esq.	
Nov20-72	Filed Affidavit of Joan Zelman, that on Nov 17th, 1972 she did serve memorandum, Reply Memorandum & Answer as indicated.	
Dec4-72	Filed pltffs Supplemental and substituted memorandum of points and authorities in opposition to the motion to dismiss of defts as indicated.	JG.
Dec8-72	Filed pltffs first interrogatories to deft long island railroad.	
Dec11-72	Filed Reply of Points and Authorities of defts Brotherhood of Railway, and Airline Clerks and Brac Lodges Nos. 90 and 0177 to supplemental and substituted memorandum of pltffs in opposition to motions.	
Jan10-73	Filed pltffs Notice of Motion to amend complaint purs to Rule 15 (a) of the FRCP.	
Jan27-73	Filed Notice of Motion Ret. 1/8/73 at 1 PM in Room 1105 re: Serve Pltfs' First Set of Interrogs. etc.	
Jan28-73	Filed OPINION #39357. Cagliardi, J. Motion of deft. labor organizations to dismiss the complaint for failure to state a claim is granted; Pltfs'.motion that this action be maintained as a Rule 23(b)(2) class action is conditionally granted; pltfs'.motion for leave to add the Brotherhood of Locomotive Engineers as a party deft. is denied; Pltfs. are directed to file an amended complaint incorporating the proposed amendments within 10 days from date of this decision. So ordered. (mailed notice).	
Feb.13-73	Filed affidavit of R.H. Stokes in response to pltff's motion .	
Feb. 15-73	Filed additional answers to pltff's interrogs.	

Cont'd on page #3

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN ENCLOSURE RETURNS
Apr.18-73	Filed deft's answers to pltff's interrogs.	
Apr.18-73	Filed Report of U.S. Magistrate Raby.	
Apr.18-73	Filed MEMO.END. on motion papers filed 2/27/73. Respectfully referred to Magistrate Raby to hear and report.	
	MEMO.END. 4/18/73. Motion granted to extent indicated in report of Magistrate Raby, dated 4/13/73. Gagliardi, J.	
June 1,'73	Filed notice of taking of deposition of Long Island Railroad by Attys. for Pltffs.	
Jun.26-73	Filed pltff's affidavit & notice of motion for leave to file, amendment of the complaint ret.7-3-73.	
Sep 25 73	Filed transcript of record of proceedings, dated 7/10/73	
Nov9-73	Filed First document request prusuant to Rule 34 FRCivP by pltff F.J. Capers,etal to deft Long Island Railroad.	
11/19/73	PRE-TRIAL CONFERENCE HELD BY Gagliardi, J.	
Jan11-74	Filed opposition of deft Brotherhood of Railway and Airline Clerks and its local lodges Nos. 90 and 0177 to motion ~~of pltffs to vacate prior order dismissing complaint and~~ grant leave to file a substituted complaint.	
Jan11-74	Filed opposition of deft Carmen and Machinist Labr Organizations to pltffs' motion to vacate the Court's order of 3-28-73, to ~~add parties deft and for leave to file a subsituted amended~~ complaint.	
1-14-74	Filed pltffs' reply memorandum in support of their motinn to add parties and for leave to file a subsituted amended complaint.	
/10/74	Filed pltff H. Oouterbridge's motion re: preliminary injunction ret: 4/23/74.	
/10/74	Filed pltff H. Outerbridges memo of law insupport of motion for preliminary injunction.	
or26/74	Filed affdvt of Edmand P. DeCeck in opposition to the motion of H. Outerbridge for a preliminary injunction.	
ay14/74	Filed pltffs' notice of appearance of atty for pltffs.	
ay14/74	Filed notice of appearance for NAACP Legal Defense Fund. White & Case, 14Wall St.NYC 10005. 732-1040.	
ay 17/74	Filed NAACP Legal Defense Fund's notice of deposition upon oral examinion of deft Long Island Railroad on 5/28/74. (E. Zeman)	
ay 17/74	Filed NAACP Legal Defense Fund's notice of deposition upon oral examination of deft Edmund P. DeCeck on 5/24/74.	

D. C. 110

Cont'd on page #4

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72 Civ 3168 Frances Joy Capers, etal vs. Long Island RR., etal 72 Civ

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED EMOLUMENT RETURNS
1.24/74	Filed pltffs.' notice of motion re: compel production of documents ret: 7/30/74.	
1.24/74	Filed pltffs.' memo. of law in support of pltffs.' motion to compel production of documents.	
.29/74	Filed deftLIRR's affdvt in opposition to pltff.'s motion for discovery and inspection.etc.	
.16-74	Filed Memo-endorsed on pltff's motion filed 7-24-74 Re: documents: This matter is respectfully referred to Magistrate, Schreiber for hearing & report. Gagliardi,J.	
.23-74	Filed pltff's affidavits & show cause order for a preliminary injunction, ret.8-28-74 RM. 506 At 2;P.M. before Connor;,J.	
.28-74	Filed deft's Long Island RR Co. memorandum of law.	
.28-74	Filed affidavit of N.D. Peters in opposition to pltff's motion.	
.3/74	Filed pltffs.' notice of deposition upon oral examination.	
.23/74	Filed deposition of deft. Long Island Railroad by Nelson G. Peters, dated 8/30/74.	
.21/74	Filed pltffs.' notice of motion to add parties and for leave to file a substituted and amended complaint.	
.21/74	Filed memo. of law in support of pltffs.' motion to add parties deft. and for leave to file a substituted,amended complaint, to join as defts. the Brotherhood of Locomotive Engineers and the additional unions named herein, and to add Howard Outerbridge as a named pltff is granted. The complaint appears on its face to be sufficient. pltffs are directed to serve thesubstituted and amended complaint on all parties within 10 days. Cagliardi,J. mn	
.1/74	Filed AMENDED COMPLAINT, and issued summons.	
.9/74	Filed Stip. & Order that time for pltffs. to serve the substituted and amended complaint shall be extended for 30 days until 11/5/74. Cagliardi,J.	
.22/74	Filed NAACP's notice of deposition upon oral examination of deft. Long Island Railroad by Robert Partridge on 11/4/74.	
.22/74	Filed NAACP's notice of deposition of Long Island Railroad by D. Mazzanotti on 11/4/74.	
.29/74	Filed affdvt. of Vincent R. Fitzpatrick,Jr. in reply to the affdvt. of Edmund P. DeCeck.	
8/31/74	Filed transcript of record of proceedings, dated 9/20/74	

DATE	PROCEEDINGS	Date Order or Judgment Not.
.8/74	Filed Stip. & Order that the time of pltffs. to serve the substituted and amended complaint shall be extended fro 30 days until 12/5/74. Gagliardi,J.	
.8/74	Filed deposition of Edmund P. DeCeck dated 7/10/74. mn	
.11/74	Filed Stip. & Order that the time for deft. Local Lodge #56, Brotherhood of Railway Signalmen, within which to answer the substituted and amended complaint is ext. to 12/6/74. Gagliardi,J.	
.13/74	Filed Stip. & Order that the time for deft. International Brotherhood of Teamsters toanswer is ext. to 12/2/74. Gagliardi,J.	
.13/74	Filed Stip. & Order that the time for untion defts. to plead to the substituted and amended complaint is ext. to 12/2/74. Gagliardi,J.	
.13/74	Filed Stip. & Order that the notice to take deposition of deft.(R.Partridge L.I. Railroad is adjourned to 12/2/74,that the deposition of deft. L.I. Railroad (D. Mazzanotti is adjorned to 12/2/74. Gagliardi,J.	
18/74	Filed ORDER that the relevant documents reflecting the weight of train service and block operator employees my be examined and copied by the pltffs., at pltffs.' expense, at the office of the Long Island Railroad at Jamaica Station, Jamaica,N.Y. etc. Gagliardi,J.	
8/74	Filed Stip. & Order that the notice to take deposition of deft. L.I. Railroad by R. Partridge, is adjourned to 1/15/75,etc. Gagliardi,J.	
9/74	Filed Stip. & Order that the time of the pltffs. to serve the substituted and amended complaint shall be extended for 41 days until 1/15/75. Gagliardi,J.	
3/74	Filed Stip. & Order that the time for the union defts. to plead is ext. to 12/30/74. Gagliardi,J.	
8-74	Filed stip & order that the time for deft International Brotherhood of teamsters to answer is extended to Dec. 16, 1974.Gagliardi,J.	
/75	Filed ANSWER of deft. Brotherhood of Locomotive Engineers to substituted and amended complaint.	
/75	Filed ANSWER of deft. B.R.A.C. and its Local Lodges No. 91 and No. 677 to substituted and amended complaint.	
.8/75	Filed Stip. & Order that the time for the union defts. to move etc. with respect to the substituted amended complaint is ext. to 1/10/75. Gagliardi,J.	
10/75	Filed ANSWER of contract [illegible] to the substituted amended complaint.	
/75	Filed ANSWER of Deft.Local Lodge#91,Railroad Yardmasters of America to Substituted and amended complaint.	
/75	Filed Summons with Marshal's Returns #1 thru 26: Served:	
	(1) ~~Brotherhood of Railway,Airline&Steamship Clerks,etc.c/o Donald Waldron~~ personally on 11/23/74	
	(2) Brotherhood of Railway,etc.by Thomas J.Hewson-unexecEndeavor-10/25/75	
	(3) Clerks,Freight Handlers,Express&Station Empl,c/o Frank Dennin by Stephen Blio.on 10/25/76	
	(4) Line&Steamship Clerks,etc.c/o Fucci by Huck F.Lane,10/21/74	
	(5) Brotherhood Railway Carmen of America,c/o D'Avanzo personally, 10/9/74.	
	(6) Local 886,Brotherhood Railway Carmen of America	
	(7) Intnl.Assoc.of Machinists&Aerospace Workers,c/o Joseph Burns by Mrs. Allen on 12/18/75	
	(8) Intnl Assoc.of Machinists "c/o Monyy-unex.End.10/10/74	

(contd pg 6)

72 Civ.3158

JUDGE [illegible]

JUDGE [illegible]

72 Ci

[illegible]PERS ET AL VS. LI RAILROAD,ETC. ET AL 6

DATE	PROCEEDINGS	Date Judgm
Feb.10-74	Marshal's Returns (contd)Served:	
	(8)Local 754,Intnl Assn of Machinists&Aerospace Workers c/o Burns,Jr. per-	
	(2) sonally on 12/18/74	
	(8)Local 754,etc.c/o Monvy -unex.Endeavor 10/10/74	
	(9) United Transportation Union by Canavan personally ,10/17/74	
	(10) Local 517A,United Transportation Union,by Canavan,personally,10/17/74	
	(11) Brotherhood of Locomotive Engineers by Mr.Boyle ,10/9/74	
	(12) Local 645,United Transportation Union by Canavan,1/23/75	
	(2) (12) Local " "" " "c/o Quinn-unex.End.10/23/74	
	(13) " "R ,United " "by Mangini,11/19/74	
	(14) " 1831, " " c/O"Arthuns by Mrs.Arthurs-wife,10/21/74	
	(15) " " " " Union,c/o Adams by Norma E.Adams,10/17/74	
	(16) " 851,American Railway Sups.Assn,c/o De Masi,by Barbara DeMasi,	
	adult daughter on 10/21/74	
	(17) " 851A American Railway Sups.Assn,c/o Stysiack by Mark Stysiack	
	son,10/10/74	
	(18) Local Lodge 853 American " " " by McConough(by Gary,son)10/10/74	
	(2) (19) " " 857 " " " "c/o Arter personally,12/4/74	
	(19) " " " " " " "" Arter -unex.Endeavor-10/17/74	
	(20) International Brotherhood of Elec.Workers by Mr.Bove,10/9/74	
	(21) " " " Teamsters by Robert Baptiste,10/17/74	
	(2) (22) Local 808,Intnl. " " Teamsters by John Mahoney,12/9/74	
	(22) " " " " " "-Unexec.Endeavors-10/9,22&11/5/74	
	(2) (23) Blacksmiths,Forgers&Helpers by Helen S.Mochrie,wife,1/2/75	
	(23) Intnl Brotherhood of Boilermakers,Iron Ship Builders,c/o Dalgarno -	
	unex.Endeavor -10/21/74	
	(24) Local Lodge 455,etc.,c/o James Sottile personally on 10/17/74	
	(2) (25) " " 491,Railroad Yardmasters of America,c/o Doyle-personally,1/10/75	
	(25) " " " " " " " " " by Onken,12/20/74	
	(25) " " " " " " " " " unex.End.10/22/74	
	(2) (26) " 13 ,Sheet Metal Workers Intnl Assn.c/o Raccioppi,personally,11/25/74	
	(26) " " " " " " " " unexec.End.10/21/74	
2/4/75	Filed Pltffs Sixth Notice of Motion, regarding compelling deft.LI Railroad to	
	produce documents ,etc.ret.3/11/75.	
3/75	Filed Pltffs document request to Defts, LI Railroad.	
3/75	Filed " Ltr of Stipulation to Local 294, Intnl Brotherhood of Teamsters,etc.	
3/75	Filed " " " " " " " Assoc. of Machinists&Aerospace Workers	
3/75	Filed Pltffs Ltr " " " " 55,Brotherhood of Railway Carmen of America	
3/75	Filed " " " " " 188,Sheet Metal Workers Intnl Union	
3/75	Filed " " " " " Lodge 61,American Railway Supr.Assn.	
3/75	Filed " " " " 851 American Railway Suprs.Assn	
3/75	Filed " " " " Lodge 853 American " " "	
3/75	Filed " " " " " 857 " " "	
3/75	Filed " " " " " 491,Railroad yardmasters of America	
3/75	Filed " " " " Local 517A,United Transportation Union	
3/75	Filed " " " " " 645 United Transportation Union	
3/75	Filed " " " " " 1831,United " "	
3/75	Filed " " " " " 1834 " " "	
3/75	Filed " " " " Shopmen Lodge 90 Brotherhood of Railway,Airline&Steamship e	
3/75	Filed " " " " " Local 91 " " " " "	
3/75	Filed " " " " " Lodge 154,Brotherhood of Railway Signalman	
3/75	Filed " " " " Transp.Communication Division et al	
3/75	Filed " " " " Local 6453,United Transportation Union	

(contd pg 7)

A-7

CIVIL DOCKET — 7 —

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN ENCLUMENT RETURNS
2/13/75	Filed ANSWER of Deft.International Brotherhood of Teamsters	W&C
2/27/75	PRE-TRIAL CONFERENCE HELD BY Gagliardi J	
Mar 17-75	Filed deft's Notice to take deposition (deft' L.I. RR.)	
3/19/75	PRE-TRIAL CONFERENCE HELD BY Gagliardi J	
3/27/75	Filed Affdvt of Richard H.Stokes for Deft.LIRR Co.in opposition to pltff's motion for preliminary relief.	
3/27/75	Filed Affdvt of Edward J.Zeman for LIRR Co.in opposition to pltff's motion for preliminary relief.	
4/4/75	Filed Affdvt of Richard H.Stokes for Deft LIRR Co. in opposition to pltff's motion to compel production of documents.	
3/27/75	Filed Deft.Brotherhood of Railway ,Airline&Steamship Clerks,Freight Handlers Express and Station Employes to pltffs.	
3/31/75	Filed Pltffs 1st interrogs to deft.Intnl Unions.	
4-1-75	Filed " request for admissions set 1.	
4-1-75	Filed " interrogs sdt 2	
4/15/75	PRE-TRIAL CONFERENCE HELD BY Gagliardi J	
4/15/75	Filed Pre-Hearing Memorandum in support of motion of pltff Edward W. Harris for a preliminary injunction.	
4/9/75	Filed Deft. AACP Legal Defense Fun Notice to take deposition of LIR by R.W.Strachen	
4/16/75	Filed Suppl.Memorandum in support of Pltff Howard Outerbridge's Motion for preliminary injunction.	
4/21/75	Filed Stip&Order extending time for pltff to answer to interrogs to 5/30/75.Gagliardi,J	
4/17/75	Filed Memo End. on motion of 4/17/75. Respectfully referred to Magistrate Jacobs for hearing and report.Gagliardi,J(mn)	
05-06-75	Filed Defts Response to pltffs 1st interrogs.	
05-22-75	Filed ANSWER of Deft.LIR Co to pltff's interrog Set II	
06-30-75	Filed pltffs.' notice of motion re: order imposing sanctions,etc. ret: 7-8-75.	
06-30-75	Filed memo. in support of the motion by pltffs, for sactions etc.	
07-18-75	Filed Answers of Deft.Brotherhood of Railway&Airline Clerks to pltffs 1st interrogs to deft.International unions.	
07-18-75	Filed Reply of certain Union Defts ,Reply of certain Union defts to pltffs motion to compel answers to interrogs.	
07-25-75	Filed Pltffs answers to Brac Interrogs.	

D. C. 110

(contd pg 8)

72 Civ.3168 FRANCES JOY CAPERS ET AL VS.LI RAILROAD ET AL — 72 Civ.3168

DATE	FILINGS—PROCEEDINGS pg.8	AMOUNT RECORDED IN ENDORSEMENT RECEIPTS
08-04-75	Filed defts answers to 1st interrogs.to locals of BRAC.	
09-17-75	Filed Pltff's Order to Show Cause for preliminary injunction,temporary restraining order and to expedite discovery ret.09-24-75.Gagliardi,J.	
09-17-75	PRE-TRIAL CONFERENCE HELD BY Gagliardi, J.	
11-07-75	Filed OPINION#43367.Court at this juncture must deny motion pending hearing on sharply controverted factural issues.So Ordered.Gagliardi,J.(mn)	
11-17-75	Filed transcript of record of proceedings, dated 10-1,2,3,-75	
11-19-75	Filed Deft's Notice to take deposition of Howard Cuterbridge.	
11-19-75	Filed " " " " " " Dallas R.Cherry&Eddie Floyd	
11-20-75	Filed transcript of record of proceedings dated 09-17-75 10-07-75	
01-13-76	Filed transcript of record of proceedings, dated 11/10/75	
01-05-76	" " " 11/11/75	
03-04-76	Filed Pltff's notice to take deposition of Deft.Long Island Railroad.	
03-22-76	Filed transcript of record of proceedings 12/9/75	
04-08-76	Filed Pltffs document request to deft.	
05-05-76	Filed transcript of record of proceedings 07-26-76	
05-06-76	Filed ANSWER of Deft.	HW
[illegible]	Filed transcript of record of proceedings 02-10-76	
06-16-76	Filed Pltff's certified set of interrogs,to wit: [illegible] for admissions.	
07-26-76	Filed " notice of depositin of deft.Brotherhood of Locomotive Engineers	
07-26-76	Filed " " " " " Harold J.Pryor.	
07926-76	Filed Deft.United Transportation Union request for production of documents.	
07-26-76	Filed " " " " " Deft.LIRR produce and permit such " United Transportation Union ,or attys to inspect&copy .	
07-27-76	PRE-TRIAL CONFERENCE HELD BY Gagliardi	
08-23-76	Filed pltff's notice of deposition of Harold J.Pryor.	
09-27-76	Filed " notice to take [illegible] of defts/Brotherhood of Railway Airlines,Steamship Clerks,Freight Handlers,Express&Station Employees Local Lodge no.1[illegible],Sunrise Local No.90	
09-28-76	Filed Pltffs notice of pendency of class action.	
10-22-76	Filed Pltffs' request for production of documents.	
11-03-76	Filed " affdvt&notice of motion for an order dismissing action with prejudice as against deft.Local 1934 United Transportation Union and amending summons,compl. & all papers on file by striking therefrom name of Local 1934 ,United Transportation Union as deft. ret.11/16/76,4:00 P.M.	
11-03-76	Filed Pltffs Memorandum of Law in support of motion to dismiss.	

DATE	PROCEEDINGS Pg. 9
11-15-76	Filed Affdvt by Laurence H.Rubin for deft. in opposition to pltffs'motion to dismiss complaint.
11-15-76	Filed Affdvt by Donald E.Lampson for pltff in opposition to pltff's motion permitting voluntary dismissal ,etc.
11-15-76	Filed Memorandum of Law on behalf of United Transportation Union ,an unincorporated association in opposition to pltffs motion to dismiss pltffs complaint as to Local 1934,United Transportation Union.
11-17-76	Filed Stip&Order adjourning motion to dismiss against deft.Local 1934,United Transportation Union from 11/16/76 to 11/23/76,4:00 P.M.Gagliardi,J.
11-17-76	~~PRE-TRIAL CONFERENCE HELD BY~~ Gagliardi J
11-19-76	Filed Statement of certain deft.Labor unions in opposition to pltffs'motion seeking dismissal of Local 1934,UTU as deft.
11-19-76	Filed Deft's answers to pltffs'combined set of interrogs,document requests and requests for admissions.
11-22-76	Filed affdvt by Kevin P.Quill for defts in opposition to pltffs motion dated 11/1/76 seeking an order to dismiss this action with prejudice as against Local 1934 pursuant to Rule 15(a)21&41(a)(2).
11-22-76	Filed Defts Memorandum of Law.
11-22-76	Filed " addl.answers to pltffs'combined set of interrogs,document requests&requests for admissions.
11-23-76	Filed Pltff's notice of deposition of Penn Central Co.,Issued Subpoena.
11-30-76	Fld Answers to Pltff's 1st interrogs by Sheet Metal Workers'Intnl Assn Local Union 13[illegible]
11-30-76	Fld " " " " " "American Railway Supervisors Assn Local Lodge[illegible]
12-02-76	Fld Pltff's notice to take deposition of Amtrak.Subpoena issued.
[illegible]	[illegible] Gagliardi J
12-03-76	Fld Answers of deft.Local 1934 United Transportation Union to pltffs'1st interrog.
12-03-76	Fld " " " " 645(which includes 517A&645B) United Transportation Union to Pltffs'1st interrogs.
12-03-76	Fld Answers of Deft.Local 1831 United Transportation Union to Pltffs'1st interrog.
12-03-76	Fld ANSWER of defts.locals 645,517A,645B,1831,1934 U.T.U. to complaint.
12-06-76	Filed Reply affdvt of Ronald M.Hershkowitz for pltffs in support of pltffs'motion for an order to dismiss this action.
12-06-76	Fld Pltffs Memorandum of Law in support of motion to compel production.
12-06-76	Fld Memorandum of Law on behalf of Deft.Long Island Railroad Company.
12-28-76	Filed transcript of record of proceedings, dated: December 10,13,14,15,1976.
01-14-77	Filed Pltff's notice of appearance&demand .
01-14-77	Filed Pltff John Diggs notice of Change of situs of exam from 1/14/77,2:00 P.M. to same time but to be held- at offices of deft.LIR,General Counsel's Dept. Jamaica Station,NY
01-14-77	Filed Pltff John Duggs request for production of documents&records.
01-23-77	Filed Deft's Brief
01-23-77	Filed Post-Hearing Memorandum in support of motion of pltff Edward E.Harris for Preliminary Injunction.
03-23-77	Filed Pltff's notice to take deposition of deft.Long Island Railroad
04-01-77	Filed transcript of record of proceedings, dated 01-3-77
04-01-77	Filed transcript of record of proceedings, dated 01-76
[illegible]	[illegible] dated 12-10-76
[illegible]	Filed transcript of record of proceedings dated 12-13-76
[illegible]	[illegible] 12-14-76
[illegible]	[illegible] 12-15-76
[illegible]	[illegible] 01-03-77

D. C. 10: Criminal Continuation Sheet

(cont d over)

DATE	PROCEEDINGS
	A-10
04-13 77	FILED OPINION#45780. Court has found that pltff was not deprived of 14th Amendment due process rights because of LIRR's failure to grant him hearing. Therefore, pltff's motion for preliminary injunction is denied in all respects. So Ordered. Gagliardi, J. (mn)
04-15-77	Filed Pltffs Notice of appeal for 2nd Circuit from order denying said pltff's motion for preliminary injunction on 4/13/77. (mail copy to Richard H. Stokes; Bruce H. Simon, Harold A. Ross, David J. Fleming & Paul Reilly, Jr., Donald Lampson-Elkind & Lampson; Kevin Quill; Mullholland, Hickey & Lyman; Highsaw & Mahoney; Haskell Wolf; & Rapaport & Rapaport, Esqs. on 4/15/77)
04-18-77	Fld Undertaking for costs on appeal in sum of $250.00 (National Surety Corporation)
05-12-77	Filed stipulation re: partial record to U.S.C.A. in lieu of entire file (Rule 11(f) FRAP)
05-12-77	Filed letter dated May 29-73 from plaintiffs to Judge Cagliardi, submitting porposed not to the class and manner of notice.
05-12-77	Filed letter dated July 28, 1976 from plaintiffs to all counsel informing them of July 2 hearing before Judge Gagliardi (re: notice to class).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

FRANCES JOY CAPERS, et al., each individually and on behalf of all other persons similarly situated, : 72 Civ. 3168 (LPG)

Plaintiffs, :

-against- : ORDER TO SHOW CAUSE

LONG ISLAND RAILROAD, et al., :

Defendants. :

- x

Upon the annexed Affidavits of Thomas McGanney, Esq. and Edward E. Harris, sworn to August 23, 1974,

And it appearing to the Court that immediate and irreparable injury, loss or damage will result to plaintiff Edward E. Harris if defendant is not restrained from removing said plaintiff from his position of Assistant Station Master in that he will be unable to re-attain that position once having lost it, and it further appearing to the Court that counsel for plaintiff has complied with the notice requirements of Rule 65 of the Federal Rules of Civil Procedure, it is

ORDERED, that defendant show cause in Room 506 of the United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the 28th day of August, 1974 at ~~10 A.M.~~ 2:00 P.M. or as soon thereafter as counsel can be heard why an order should not be entered herein pursuant to Rule 65 on rule of the Federal Rules of Civil Procedure for a preliminary injunction enjoining during the pendency of this action defendant and their officers, agents, servants and employees and all

R.O.

persons acting under their control and each of them from removing Mr. Harris from his present position as Assistant Station Master, and it is further

ORDERED, that pending hearing and determination of said motion, defendant and its officers, agents, servants and employees and all persons acting under their control and each of them are temporarily restrained from taking any action to remove Mr. Harris from his position of Assistant Station Master. ~~This temporary restraining order is granted~~ upon the condition that plaintiff file an undertaking for a bond as required by Federal Rules of Civil Procedure 65(c) in the amount of $ for the payment of such cost and damages as may be incurred or suffered by any ~~party whose is found to be wrongfully enjoined or restrained.~~ Sufficient cause appearing therefor, service on defendant of a copy of this Order to Show Cause, together with copies of the supporting papers on or before the 23rd day of August, 1974 at 11:00am shall be deemed sufficient service.

R.O.

Richard Owen
U.S.D.J.

SO ORDERED:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

FRANCES JOY CAPERS, et al., each individually and on behalf of all other persons similarly situated,	:	72 Civ. 3168 (LPG)
Plaintiffs,	:	
-against-	:	AFFIDAVIT
LONG ISLAND RAILROAD, et al.,	:	
Defendants.	:	

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

THOMAS McGANNEY, being duly sworn, deposes:

1. I am a member of the Bar of this Court and of the firm of White & Case, attorneys for FRANCES JOY CAPERS, et al., each individually and on behalf of all other persons similarly situated, plaintiffs in this action. I make this Affidavit in support of the annexed Order to Show Cause and Temporary Restraining Order, and in compliance with Rule 65 of the Federal Rules of Civil Procedure.

2. Plaintiffs seek their Order to Show Cause before this Court as the Honorable Lee P. Gagliardi, to whom this action is assigned, is currently on vacation.

3. The relevant facts are set forth in the Affidavit of Mr. Edward E. Harris annexed to the Order to Show Cause. The Affidavit states that the defendant, in retaliation for Mr. Harris' suit against the defendant and as a further act of discrimination against him, has removed

him from his position of Assistant Station Master on the grounds that he failed a certain written examination although, on Mr. Harris's information and belief, such procedure has never been resorted to with respect to white employees similarly situated.

4. I have been informed by Richard J. Holwell, Esq., an associate of White & Case that discussions relating to this matter have been carried on between Lawrence Rubin, Esq., staff attorney for the Long Island Railroad, representing defendant and Mr. Holwell, representing Mr. Harris. On August 22, 1974 when Mr. Rubin indicated that defendant would not reinstate Mr. Harris as an Assistant Station Master, he was advised by Mr. Holwell that plaintiff would apply to this Court for a Temporary Restraining Order at 10:30 a.m. on August 23, in Room 506.

5. No peevious application for this relief has been made.

Thomas McCanney

Thomas McCanney

Sworn to before me this
23d day of August, 1974

J. Michael Brown
Notary Public

J. MICHAEL BROWN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-4 07256
Qualified in New York County
Commission expires March 30, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

FRANCES JOY CAPERS, et al., each individually and on behalf of all other persons similarly situated,	:	
Plaintiffs,	:	72 (LPG) Civ. 3168
-against-	:	AFFIDAVIT
LONG ISLAND RAILROAD, et al.,	:	
Defendants.	:	

- x

State of New York)
: ss.:
County of New York)

EDWARD E. HARRIS, being duly sworn, says:

1. I am a black citizen of the United States, and an employee of defendant, Long Island Railroad (the "Railroad"), and a member of a class of plaintiffs bringing this lawsuit. I make this affidavit in support of my motion for a temporary restraining order restraining the Railroad from future violations of my rights under Title VII of the Civil Rights Act of 1964 and ordering the Railroad to reinstate me in the position of Assistant Station Master.

2. I have been a steady employee of the Railroad since ~~[illegible]~~ EEH. 1954. I was initially hired as a mail handler and soon became an usher which position I remained in for over 12 years without permanent promotion. The position of

usher is the top union job in the line leading to the job of Assistant Station Master ("ASM") which is the first management level, nonunion job. During my many years as an usher, I persistently sought promotion as an ASM. This position had previously been an "all-white" job as had been all management positions at the Railroad. The Railroad and its personnel with equal persistence sought to continue its policy of excluding blacks from the position I sought. Among other contrivances, the Railroad required me to take a written examination that theretofore had never been required of other applicants for ASM. Thereafter I was required to meet certain regulations involving work-training at all the Railroad's terminals which "regulations" were not in force before or after I sought assignment as an ASM. Even after I satisfied all the previously unknown "objective" standards, I was still rejected because of my "personality".*

3. I was finally qualified as an ASM in November of 1968. I continued to work as an usher, filling in on temporary vacancies in ASM positions as an extra ASM. Even when functioning as an extra ASM, however, I received

*During the period that the Railroad refused to promote me to ASM while whites with far less experience and qualifications than I were promoted to the same job, I filed complaints with the New York State Division of Human Rights. The Division dismissed these complaints and, upon the advice of my attorney, I sought relief by bringing charges with the Equal Employment Opportunity Commission. On July 16, 1973, the Commission, giving substantial weight to proceedings before the Division of Human Rights, determined that there was reasonable cause to believe that the Railroad had violated Title VII by excluding myself and blacks as a class from management positions. (See Exhibit A.)

less pay than other ushers performing the same extra ASM function. The Railroad "corrected" the situation by prospectively lowering the rate for all extra ASMs. The Railroad refused to promote me to regular ASM until November 29, 1972. By that time, four whites had been assigned as ASMs ahead of me. Furthermore, I had been working full time as an "extra" for over eight months covering a permanent ASM job that had been left vacant all that time. The facts concerning the Railroad's continuing campaign of blatant discrimination are set forth in the Determination of Reasonable Cause by the Equal Employment Opportunity Commission on July 16, 1973. I have attached a copy of this report to my affidavit.

4. Now the Railroad is again seeking to intensify its campaign of discrimination and retaliation against me by demoting me from my permanently assigned ASM position to that of an usher on patently spurious grounds. The Railroad's past discrimination in refusing to promote me to an ASM position is the subject of my initial complaint against the Railroad which has been brought in the form of a class action. It is the dilemma of my recent demotion on retaliatory and discriminatory grounds that brings me to court at this time. The facts surrounding this most recent incident are set forth in the following paragraphs.

5. It is the practice of the Railroad to require certain of its employees to periodically attend "Book of Rules" classes for the purpose of reviewing the operational aspects of the Railroad that are within the scope of each employee's job. The pertinent information

is set forth in a publication entitled "The Book of Rules". Since I have been qualified as an ASM I have attended three such classes. The first class was given some time in early 1969 shortly after my qualification as an ASM. I next attended a Book of Rules class about three years ago in the spring of 1971. The last such class I attended was held on Wednesday of this week, August 21, 1974 and resulted in my demotion to the position of usher.

6. The first class I attended was conducted by John Greer, the Book of Rules' examiner. The class was attended by fifteen or twenty other employees of the Railroad who held various jobs such as trainmen, block operators, conductors, and so forth. In conducting the class, Mr. Greer would address certain questions to individuals in the group that dealt with subject matter relative to that individual's position with the Railroad. For example, the few questions addressed to me were related to administrative aspects of the Railroad's operation. The class was conducted in an informal and friendly atmosphere and Mr. Greer used the questions and answers in an instructive or educational manner. That is, he would generally take a given answer and would expand upon it or clarify it. In situations where individuals did not know the answer, he would either explain the answer himself or turn to another member of the group for the appropriate answer. During the entire period, no references were ever made to marks, grades, examinations or anything of that sort. No test was ever given, no grades were received and no one passed or failed. As I indicated, an individual who did

not know the answer to a question or gave an improper answer was simply instructed by Mr. Greer as to what was in the Book of Rules on that particular subject. At the end of the session, the class was simply dismissed.

7. The format of the second Book of Rules class was identical to that of the first. However, instead of being attended by employees from different areas of the Railroad, this session was attended only by one Station Master and three Assistant Station Masters. As I recall, a fourth Assistant Station Master, Ralph Diaz, sat in at the class for his own personal edification. The class lasted for the same period of time, or from about 9:00 a.m. till noon. Mr. Greer continued his procedure of using questions and answers as a method of refreshing and updating our knowledge. The only difference I recall is that Mr. Greer restricted his questioning to subjects that were more related to our specific jobs as Station Master and Assistant Station Master. Again, there was no question of anyone taking an examination. Rather, the class was administered in the same instructive and educational manner as the previous class. No tests were given, no marks or grades received, and no one passed or failed. If an individual did not know the answer to a question, Mr. Greer would simply seek the answer from someone else or elaborate himself on the subject.

8. On July 22, 1974, I received a handwritten notice from Mr. J. J. Gaynor, the Terminal Superintendent directing me to attend a third Book of Rules class on

August 1, 1974 at 9:00 a.m. at Jamaica Station. When I received the notice, I immediately went to ~~speak~~ call to Mr. Lou Rizzacasa, the Terminal Trainmaster at Penn Station, and asked him if it would be possible for me to attend a different class. I explained to him that I worked the night shift from 11:00 p.m. to 7:00 a.m. and that it would be somewhat of a hardship for me to attend a class in the early morning. I stated that I felt I could get more out of such a class if I could attend on one of my days off. Mr. Rizzacasa advised me that this would not be possible and so on the morning of August 1st, I traveled to Jamaica Station after finishing my assignment at Penn Station at 7:00 a.m. As I arrived about an hour and a half before the class was to begin, I bought a cup of coffee and sat in my car to wait. Having just gotten out of work, I was fatigued and fell asleep in my car. Upon awakening at about 11:50 a.m., I realized that I had slept through the class and returned home, having decided to advise my superior of what happened that evening when I went to work. I reported to work at my usual time that evening and was advised by Robert Partridge, the Stationmaster, that he had been directed by Mr. Rizzacasa to send me home. When I asked why, Mr. Partridge replied that he did not know, that he was just doing what he was told to do. When I asked if I was to come back to work the next day, Mr. Partridge advised me that he did not know, that I would be contacted by Jamaica Station. Realizing that there was nothing I could do, I returned home. This was ~~Friday~~ Thursday night.

9. It was not until Monday morning, August 5, 1974, that I received a call from the Railroad. Mr. Charley O'Brien, the Assistant to the Terminal Superintendent, called me at 7:00 a.m. and ordered me to report to Nelson Steele, the Assistant Superintendent of Passengers, at Jamaica Station at 10:00 a.m. When I arrived to see Mr. Steele, he advised me that they were aware that I had missed the Book of Rules class and on this basis had assumed that I was not going to handle my assignment that night and brought in another man. I advised Mr. Steele that there is a regular procedure whereby a man who is not going to cover his assignment calls in and so advises the Railroad. I said that this procedure had always been followed and therefore there was no reason to call in a new man to replace me. Mr. Steele advised me that he considered the Book of Rules class to be an "assignment" and on this basis ordered in a replacement for me.

10. After returning to work, I received a notice on August 3, 1974 from Mr. Rizzacasa who directed me to attend a Book of Rules class to be held on August 22, 1974. Although this was again scheduled in the early morning following my all-night shift, I knew that it was useless to attempt to have it rescheduled. Prior to attending the class, I had the opportunity to speak with a fellow Assistant Station Master, Ralph Diaz who had attended the class on August 1. It was apparent from my conversation with Mr. Diaz that the class he attended was identical to out prior classes. That is, the material was reviewed in a constructive manner, no examinations were given, no grades received, and no one passed or failed.

11. Upon arriving for the Book of Rules class August 21, 1974 I quickly realized that the usual procedure for the class was going to be changed that day. As Mr. Greer was apparently on vacation, a Mr. F. Peters conducted the class. I use the word "class" loosely as I was the only member. After reviewing my Book of Rules to ensure that it was in order, Mr. Peters began grilling me as to the meaning of different signals used out on the tracks. Frankly, I was completely taken aback by this procedure. The interprerations of signals out on the tracks is hardly the type of information that an ASM, responsible for the administration of a station, has on his finger tips. As a result, I was unable to answer many of the questions correctly. After continuing this interrogation for about a half hour, Mr. Peters left the room for a few moments, and upon returning, told me that I was now to take a written examination.* The examination that Mr. Peters gave me covered a wide variety of topics such as signals, duties of a conductor, the equipment a ~~block operator~~ brakeman should carry, and so forth. I admit quite readily that I was totally unprepared for any type of examination and the results of the test reflect this fact.

12. After I completed the examination Mr. Peters graded the exam in my presence and then turned to me and said: "No, no good. Come on we will have to go up and see Mr. Steele." Mr. Steele advised me that I did not pass the

* I should point out that I had already passed a written examination in 1968 in order to qualify as an ASM. As I have indicated, this examination was instituted only after I sought to attain the position of station master.

the test, and that "we can't have that." He then advised me that he was going to reduce me back to the status of an usher and that I should go to see the Station Master for an assignment. I was advised by Mr. Steele that I could be restored to my former position only if I were to pass another written examination.

13. I have been a steady employee of the Railroad for many, many years and have suffered a great amount of abuse during this time. The Railroad now seeks to further humiliate me by demoting me from the position of ASM, a position which I struggled for many years to achieve. I know of no other situation in which an ASM or Station Master has ever been forced to take or pass a written examination on the Book of Rules after qualifying for his position.

14. As a result of this disparate and obviously discriminatory treatment, I must now go back to work as an usher at a significant reduction in pay. In addition to the loss of money and the humiliation is the fact that the Railroad may attempt to fill my position with another employee. Once this is done, of course, the Railroad willhhave raised yet another barrier to regaining a position that was wrongfully taken from me. Equally unjust is the fact that I am once again being faced to meet standards and pass examinations that have never been required of any Station Master or ASM in the past.

15. On the basis of this affidavit I request the Court to order the Railroad to immediately cease its continuing discriminatory and retaliatory tactics against

me and to immediately reassign me to my former position as an ASM.

(s) Edward E. Harris
Edward E. Harris

Sworn to before me this
23rd day of August, 1974

J. Michael Brown
Notary Public

J. MICHAEL BROWN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-4502258
Qualified in New York County
Commission Expires March 30, 1975

A:25

CERTIFIED MAIL #299154 - C/P
#299155 - R

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
26 FEDERAL PLAZA, ROOM 4002
(At Foley Square)
NEW YORK, NEW YORK 10007
264 - 3840

Edward E. Harris
187 - 15 Nashville Blvd.
Springfield Gardens, New York 11413

Charge No. TNY 1-1259
Case No. YNY 4-004

vs.

Charging Party

Long Island Rail Road
Jamaica Station
Jamaica, New York 11435

Respondent

DETERMINATION

Under the authority vested in me by Section 1601.19b (d) of the Commission's Procedural Rules, 29 CFR 20165 (September 27, 1972), I issue, on behalf of the Commission, the following Determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, and the timeliness and all other jurisdictional requirements have been met. Substantial weight has been accorded the findings of the New York State Division of Human Rights.

Charging Party alleges that he was denied promotion, first as an "extra" then as a permanently assigned Assistant Station Master (ASM) because of his race (Black).

The record shows that Charging Party sought this assignment for over 5 years from August 2, 1967 until his permanent appointment on November 29, 1972.

The record shows that in his efforts to be promoted Charging Party faced numerous obstacles and discouraging incidents which either deliberately, or through extreme coincidence, were not faced by Caucasians seeking the same positions. These included

EXHIBIT A

a written test required for Charging Party but not for those who had previously been qualified as an "extra" ASM and the institution of a regulation that one must be qualified to work at all three principal terminals before being permitted to work any. This "regulation" does not appear to have been in force either before or after Charging Party sought his initial assignment.

The record shows that Respondent had no publicized established system of posting vacancies, accepting bids or determining who should be selected for permanent assignments beyond the subjective judgment of management. The record shows the reason cited for passing over Charging Party was that the Caucasian official making the selection felt him lacking a "take charge" personality. The record shows Charging Party's work as an extra ASM to be as satisfactory as that of the Caucasian extras and, further, that Charging Party had been a satisfactory and reliable employee of Respondent for far longer than many of the Caucasian extras and that his original craft was one which traditionally furnishes the A.S.M. candidates.

The record shows that at least four Caucasians were permanently assigned between the time Charging Party first sought and finally received the position. The record shows that the slot Charging Party was ultimately appointed to was left vacant from March 16, 1970 until November 28, 1972. The record shows that Charging Party functioned in this position as an extra on a virtually full-time basis from May 1971 until his appointment, and that he "held down" the position from March 1, 1972. The record does not show that Respondent regularly requires extra ASMs to work and/or "hold down" a position for such a long period of time prior to their permanent appointment; further, the ASM position had been an all "Caucasian job" historically; with respect to both extra and permanent assignments. The record shows that for a prolonged period Charging Party was paid at a lower rate than the Caucasian extras and that Respondent "corrected" this by lowering the rate for all extra ASMs.

The record shows that Charging Party's complaint of race discrimination to an appropriate state agency became "common knowledge" among his co-workers and supervisors. The record does not indicate that it was Charging Party who made this information "common knowledge".

The record shows that Charging Party is the first and only Black to be a permanently assigned ASM. The record shows that approximately 20 other persons hold or have held this position since 1967.

The record shows that the ASM position is considered a management position. The record shows, as of April 1972, that fewer than 01.2% of Respondent's 267 managerial and fewer than 04.6% of Respondent's 559 office and clerical employees were Black although at the same time nearly 12.0% of Respondent's total work force was Black.

Based on the foregoing I conclude that there is reasonable cause to believe that Respondent violated Title VII as alleged, and by restricting Charging Party and Blacks as a class generally from management positions.

Having so determined the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. A representative of the Commission will be in contact with the parties with regard to the settlement of this matter.

On Behalf of the Commission:

16 July 1973
Date

Daniel Murnane Mackey
District Director

LHR/RHS
8/27/74 A 28
JS-3007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

FRANCES JOY CAPERS, et al., each individually and on behalf of all other persons similarly situated,

Plaintiffs,

-against-

THE LONG ISLAND RAILROAD, et al.,

Defendants.

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

NELSON D. PETERS, being duly sworn, deposes and says:

I am employed by The Long Island Rail Road Company as Supervisor - Transportation Rules and Procedure, and I make this affidavit in opposition to plaintiff's motion for a preliminary injunction seeking to enjoin the The Long Island Rail Road Company from removing plaintiff from his position as Assistant Station Master (ASM).

As Supervisor - Transportation Rules and Procedure, I am responsible for giving both initial and periodic examinations to all employees whose duties pertain to the operation and movement of trains. These periodic examinations are given at least every three years to all Transportation Department personnel and all such employees are expected to both initially qualify and pass an examination on the Book of Rules and to maintain qualifications on the Book of Rules. Employees in more responsible positions are tested more frequently as required for the safe and

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

72 Civ. 3168 (LPG)

FRANCES JOY CAPERS, et al., each individually and on behalf of all other persons similarly situated,

Plaintiffs,

-against-

LONG ISLAND RAILROAD, et al.,

Defendants.

AFFIDAVIT

----------x

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

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As Supervisor - Transportation Rules and Procedure, I am responsible for giving both initial and periodic examinations to all employees whose duties pertain to the operation and movement of trains. These periodic examinations are given at least every three years to all Transportation Department personnel and all such employees are expected to both initially qualify and pass an examination on the Book of Rules and to maintain qualifications on the Book of Rules. Employees in more responsible positions are tested more frequently as required for the safe and

efficient operation of the Railroad. The procedure for giving the periodic examination consists of oral discussion on the Book of Rules in order to determine, generally, the employee's knowledge in this area. In most cases, the discussion is all that is required, since usually in the course of such discussion the employee is able to demonstratehis competency on the Book of Rules. However, if the oral discussion reveals that the employee is unfamiliar with a number of the fundamental aspectes of his job, I will, as a matter of course, administer a more formal written examination in order to determine his competency.

On August 21, 1974, Mr. Edward Harris arrived for his periodic examination. During my oral discussion, I was shocked that the answers of a man, who had reached the managerial level of responsibility, could be of such poor quality. Some of the more glaring areas of incompetency were failure to recognize a stop signal; failure to recognize a stop and proceed signal; and lack of knowledge of speed required on a stop and proceed signal.

As a result of this evidence of his lack of knowledge, I decided to give Mr. Harris a written examination in order to further determine his competency. This is a standard procedure if an employee demonstrates a fundamental lack of knowledge in the oral discussion. This passing grade on the written examination is 75 percent. Mr. Harris achieved a grade of 52 percent, and I believe he would not have even scored that if we had not previously discussed several questions orally. A copy of the examination with Mr. Harris' answers is annexed hereto as Exhibit A. I then informed Nelson Steele, Assistant Superintendent-Passenger, of the unsatisfactory grade acheived by Mr. Harris on the examination.

Mr. Harris states that the examination was given at 9 a.m. and he was not given permission to have the examination changed to a differen

hour. All examinations are given at 9 a.m. and all personnel, whether labor or management, are required to attend at this time. Mr. Harris also states that contrary to normal Railroad practices, he was given the examination by himself. Mr. Harris was originally scheduled for oral examination with Mr. Ralph Diaz and had Mr. Harris arrived on the date of the original examination, he would have taken the examination with another employee. By the time he took the oral examination, the other ten ASM's had been examined, and he was examined alone merely because he failed to appear for the prior scheduled examination.

Mr. Harris implies that he is the only employee on the Railroad who was required to pass a written examination in order to qualify for or retain a given position. This is untrue. All new train service employees on the Railroad must achieve a passing grade of 75 percent on a Book of Rules test that ismuch more difficult than the test that was given to Mr. Harris, and in addition, they are required to pass a second test several weeks into their employment. Many trainees fail these tests and must be dismissed from the Railroad. On previous occaisions, Railroad employees have taken and failed periodic examinations and have been demoted from their position.

In the case of two conductors, E.E. McConnell and J.E. Williams, each demonstrated incompetency in the area of the Book of Rules and were required to take the written examination. Both conductors failed the examination and were demoted to the position of ticket collectors. Copies of their examinations are annexed hereto as Exhibits B and C. The position of conductor, although not a management position, is a position of high responsibility, which covers the safe and prompt movement of individual trains. By demonstrating their lack of qualification, these menwere placed in positions where they would not be responsible for general public safety.

On previous occasions, train dispatchers, who are responsible for the safe and prompt movement of all trains, have failed oral examinations and have been required to take written examinations in order to continue in their positions. Copies of standard examination thatare given to train dispatchers are annexed hereto as Exhibits D and E. On another occasion, A. J. Madison, a brakeman, demonstrated incompetency in the area of the Book of Rules. He was requested to take a written examination, at which time he resigned rather than take the examination. A copy of the inter-office memo noting the failure of the examination by Mr. Madison is annexed hereto as Exhibit F.

Mr. Harris alleges in his affidavit that the examination was given to him on August 21, 1974, did not test the type of information that as ASM would be responsible for. The questions are similar to those given during the oral examination of an ASM and is a specific test given to ASM's. If is of such an elementary nature, however, that I would expect all Transportation Department employees to pass it easily. Certainly, a management employee, holding a position of responsibility such as Mr. Harris, who supervises so many others, should have had no difficulty with the examination.

Some glaring examples of the lack of knowledge include:

1. Question 18 - Mr. Harris states that maximum authorized speed for a train in Brook interlocking is 60 m.p.h. Brook interlocking is at the entrance to the Flatbush Avenue Station in Brooklyn. The maximum authorized speed is 5 m.p.h. A train going 60 m.p.h. into the station would probably end up smashing into the bumper block at the end of the track causing severe injuries to both passengers and crew. An Assistant Station Master qualified in Brooklyn must be familiar with the maximum authorized speed in the station and appurtenant track complex

so as to be able to judge how quickly trains can be cleared in and out of the station, particularly when delays or mechanical problems have fouled up the arrival and departure schedules when the ASM must make on-the-spot decisions in regard to ordering trains in and out of the platform.

2. Question 11 - Mr. Harris proposes to hang a red latern on the front of a train. Red laterns are strictly confined to the rear of trains and a red light on the front of a train would cause a serious safety hazard.

3. Question 16 - Mr. Harris is expressly responsible for the equipment of all employees working for him. In additon to not listing the red flag and white light so elementary to the function of a flagman, he lists torpedos, which have not been used by the Railroad since 1972.

4. Question 15 - Mr. Harris cl that the ringing of an engine bell indicates an emergency, whereas, to the contrary, it indicates that the train is ready to proceed.

5. Question 9 - In his affidavit, Mr. Harris claims that as an Assistant Station Master, he is not responsible for knowing about engine signals. This is absolutely not true, for an Assistant Station Master is required to be particularly familiar with the four and five whistle signals. The five whistle signal indicates that a train needs a car inspector and often this can result in train delays requiring immediate decision action by the ASM. The four whistle signal is notice from the train that it is ready and able to proceed but cannot because of an adverse aspect on the lighted track signal. Particularly in commission hours, the ASM had better take immediate steps to find out why a proper track signal has not been displayed and to get the situation corrected or the scheduled arrivals and departures will end up in a chaotic situation.

Mr. Harris states that a periodic examination is merely a

periodic review similar to instruction class. However, the Book of Rules clearly states in Rule C, "that employees whose duties require them to be familiar with the Book of Rules and Timetable must pass a satisfactory examination within the time specified by the head of the department. Employees may be re-examined when directed by proper authority." It is not merely an instruction class but a formal examination necessary for the safe operation of the Railroad.

Mr. Harris has failed to retain the required knowledge of the Book of Rules. Therefore, in the interest of public safety and the welfare of all employees under his supervision, he cannot be allowed to continue in his present position until he demonstrates competent knowledge of the Book of Rules. Another examination has been scheduled for September 20, 1974.

NELSON D. PETERS

Sworn to before me this

(L)

28th day of August, 1974

Notary Public
Marsha A. Jenkins
Notary Public State of New York
No. 30-4516616
Qualified in Nassau County
Commission Ex!ires March 30, 1976

LHR/RHS
8/28/74
JS-3007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

FRANCES JOY CAPERS, et al., each individually and on behalf of all other persons similarly situated,

Plaintiffs,

-against-

LONG ISLAND RAILROAD, et al.,

Defendants.

- -x

AFFIDAVIT

72 Civ. 3168 (LPG)

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

NELSON E. STEELE, being duly sworn, deposes and says:

I am employed by The Long Island Rail Road Company as Assistant Superintendent - Passenger, and I make this affidavit in opposition to plaintiff's motion for a preliminary injunction seeking to enjoin The Long Island Rail Road Company from removing plaintiff from his position as Assistant Station Master (ASM).

As Assistant Superintendent - Passenger, I am responsible for the entire passenger operations of the Railroad.

On August 5, 1974, Mr. Harris reported to my office. He explained that on Thursday morning, August 1, 1974, after completing his Wednesday assignment, he intended to report to Jamaica at 9:00 a.m. for his Book of Rules Examination. Mr. Harris had been given at least 5 days' notice of the upcoming examination. He did not appear for the scheduled test and explained that he had fallen asleep in his car outside Jamaica Station and did not awaken until 11:50 a.m.

While I did not belabor the point of his falling asleep, I did question his failure to recognize his responsiblity to notify his superiors of the reason for his not reporting for the Rules examination and whether or not he intended to cover his assignment that evening. My office is in Jamaica Station, and Mr. Harris could have easily contacted me after he had awakened in his car. It was explained to him that absent any information as to his whereabouts, my first concern was the needs of the Railroad; therefore, I ordered his job covered by an extra man for that evening. Mr. Harris arrived for his assignment that evening but was sent home since an extra man had already been called to cover his job for the evening.

Mr. Harris did not report for work on August 2 or 3, and did not inform the Railroad that he would not be in. August 4 was his relief day. On Monday, August 5, he arrived in my office. My further conversation with him on that day covered his responsibilities as a member of management, which he acknowledged, as well as my refusal to authorize payment to him for those days on which he had not performed any service. The discussion ended amicably and he was told to resume covering his assignment. As far as I was concerned, the incident was closed.

On August 21, 1974, Mr. Nelson Steele, Supervisor-Transportation Rules and Procedures, informed me that Mr. Harris' replies during an oral examination on the Book of Rules were of such poor quality that he decided to give him a written examination in order to further determine his competency. The result of the test (attached to Mr. Peters' affidavit as Exhibit A) was that Mr. Harris achieved a mark of 53 percent. The passing grade is 75 percent.

After the conversation with Mr. Peters, as well as reviewing the examination results, I informed Mr. Harris that I was forced to return him to his former position of station usher as a result of his poor showin

on the examination. This demotion is normal Railroad procedure and has been done in the past when an employee has failed the examination.

I informed Mr. Harris that I would schedule an additional examination in approximately 30 days in order to provide him with an opportunity to regain his status as Assistant Station Master, and I assured him that if he passed, he would be put back in the same job.

That same day, a certified letter was sent notifying Mr. Harris to report for this examination on September 20, 1974. Said letter is annexed hereto as Exhibit A. If Mr. Harris passes this examination, he will get back his former position as Assistant Station Master. However, the Railroad cannot allow a man who has demonstrated such a fundamental lack of knowledge to remain in a position where the safety and welfare of both the public and other Railroad employees may be jeopardized. Since the temporary order made on Friday to return Mr. Harris to his position of ASM, I have had no alternative but to assign a second man to cover his position in order to safeguard the public and assure the efficient operation of the station.

NELSON E. STEELE

Sworn to before me
L)
this 28th day of August 1974.

Marsha A. Jenkins
Notary Public State of New York
No. 30-4516616
Qualified in Nassau County
Commission Expires March 30, 1976

August 21, 1974

Certified Mail No. 644307

Mr. E. E. Harris
187-15 Nashville Boulevard
Springfield Gardens, New York 11413

Dear Mr. Harris:

This is your notification to report for an examination at 9 a.m., Friday, September 20, 1974, to Instruction Car I-11, Pay Car Spur, Jamaica Station.

The purpose of this examination will be to afford you the opportunity to regain your qualification of Assistant Station Master.

Very truly yours,

N. H. Steele
Assistant Superintendent - Passenger

cc: J. H. Gaynor
D. H. Mezzanotte
File (2)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

- x

Frances Joy Capers, Vivian Wright, Marshall Jackson, Edward Harris, Ernest Brown, John Diggs, Charles Allen, Kenneth Morris, James Van Ness, Albert Stroman and Howard Outerbridge, each individually and on behalf of all others similarly situated,

Plaintiffs,

- v -

Long Island Railroad, a corporation;

Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated association;

Sunrise Lodge #90, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated association;

Local 0177, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated association;

Transportation-Communication Division, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated association;

Brotherhood Railway Carmen of America, an unincorporated association;

Local 886, Brotherhood Railway Carmen of America, an unincorporated association;

International Association of Machinists and Aerospace Workers, an unincorporated association;

Local 754, International Association of Machinists and Aerospace Workers, an unincorporated association;

United Transportation Union, an unincorporated association;

Local 517A, United Transportation Union, an unincorporated association;

Brotherhood of Locomotive Engineers, an unincorporated association;

L.P.G.

Civil Action No. 72-3168

SUMMONS

BEST COPY AVAILABLE

Local 645, United Transportation Union, an unincorporated association; :

Local 645B, United Transportation Union, an unincorporated association; :

Local 1831, United Transportation Union, an unincorporated association; :

Local 1834, United Transportation Union, an unincorporated association; :

Local Lodge 851, American Railway Supervisors Association, an unincorporated association; :

Local 851A, American Railway Supervisors Association, an unincorporated association; :

Local Lodge 853, American Railway Supervisors Association, an unincorporated association; :

Local Lodge 857, American Railway Supervisors Association, an unincorporated association; :

International Brotherhood of Electrical Workers, an unincorporated association; :

International Brotherhood of Teamsters, an unincorporated association; :

Local 808, International Brotherhood of Teamsters, an unincorporated association; :

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, an unincorporated association; :

Local Lodge #56, Brotherhood of Railway Signalmen; :

Local Lodge #91, Railroad Yardmasters of America; and :

Local 138, Sheet Metal Workers International Association; :

Defendants. :

- x

To the above named Defendants:

You are hereby summoned and required to serve upon

Thomas McGanney, Esq.
Richard J. Holwell, Esq.

BEST COPY AVAILABLE

A-40

plaintiff's attorneys, whose address is

14 Wall Street
New York, New York 10005

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

R. F. Burghardt
Clerk of Court

B. Edwards
Deputy Clerk

Date: ~~September 30,~~ OCT. 1 1974 [Seal of Court]

NOTE:- This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Frances Joy Capers, Vivian Wright, Marshall Jackson, Edward Harris, Ernest Brown, John Diggs, Charles Allen, Kenneth Morris, James Van Ness, Albert Stroman and Howard Outerbridge, each individually and on behalf of all others similarly situated,

Plaintiffs,

- v -

Long Island Railroad, a corporation;

Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated association;

Sunrise Lodge #90, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated association;

Local 0177, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated assocation;

Transportation-Communication Division, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated assocation;

Brotherhood Railway Carmen of America, an unincorporated association;

Local 886, Brotherhood Railway Carmen of America, an unincorporated association;

International Association of Machinists and Aerospace Workers, an unincorporated association;

Local 754, International Association of Machinists and Aerospace Workers, an unincorporated association;

United Transportation Union, an unincorporated association;

Local 517A, United Transportation Union, an unincorporated assocation;

Brotherhood of Locomotive Engineers, an unincorporated association;

L.P.G.

Civil Action
No. 72-3168
Substituted and
Amended Complaint
(Class Action)

Local 645, United Transportation Union, an unincorporated association;

Local 645B, United Transportation Union, an unincorporated association;

Local 1831, United Transportation Union, an unincorporated association;

Local 1834, United Transportation Union, an unincorporated association;

Local Lodge 851, American Railway Supervisors Association, an unincorporated association;

Local 851A, American Railway Supervisors Association, an unincorporated association;

Local Lodge 853, American Railway Supervisors Association, an unincorporated association;

Local Lodge 857, American Railway Supervisors Association, an unincorporated association;

International Brotherhood of Electrical Workers, an unincorporated association;

International Brotherhood of Teamsters, an unincorporated association;

Local 808, International Brotherhood of Teamsters, an unincorporated association;

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, an unincorporated association;

Local Lodge #56, Brotherhood of Railway Signalmen;

Local Lodge #91, Railroad Yardmasters of America; and

Local 138, Sheet Metal Workers International Association;

Defendants.

SUBSTITUTED AND AMENDED COMPLAINT

Plaintiffs hereby amend their Amended Complaint filed in this action on the 16th day of August, 1972 to incorporate those amendments for which plaintiffs sought approval in their

Motions for Leave to File Amended Complaints submitted to this Court on the 17th day of April, 1973 and the 3rd day of July, 1973 as well as those amendments for which plaintiffs seek approval in their Motion to Amend Complaint and Add Parties filed herewith.

I. JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1337 and 1343 (4); 42 U.S.C. §2000e-5(f) and 28 U.S.C. §§2201 and 2202. This is a suit in equity authorized and instituted pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964" as amended, 42 U.S.C. §§2000e et. seq. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by:

A. 42 U.S.C. §§2000e et seq., providing for injunctive and other relief against racial discrimination in employment;

B. 42 U.S.C. §1981, providing for the equal rights of all persons in every state and territory within the jurisdiction of the United States, to make and enforce contracts;

C. 42 U.S.C. §1983 which establishes a cause of action for individuals whose rights under the Constitution and laws of the United States have been infringed upon by the misuse or abuse of power or authority conferred by a state;

D. 45 U.S.C. §§151-163, based on violations of the duty of fair representation owed to plaintiffs and the class they represent.

CLASS ACTION ALLEGATIONS

2. a) Plaintiffs allege that this class action is maintainable under F.R.Civ.P. Rule 23(b)(2).

b) The class consists of Black persons who have been or are employed, or might be employed by defendant Long Island Railroad (hereinafter referred to as "LIRR"), at any of its facilities in New York State, and who are members or might become members of defendant unions, who have been and continue to be or might be adversely affected by the practices complained

of herein.

c) It is not possible to enumerate members of the class exactly but they number over eight hundred. It is clear that the class is so numerous that joinder of all members is impracticable.

d) The individual plaintiffs are Black persons who either have been or are employed, or have applied for employment by defendant LIRR and are members or might become members of defendant unions. These individuals will fairly and adequately protect the interests of the class. Their claims are typical of the claims of the class.

e) There are questions of law and fact which are common to the class. The common questions of fact include:

(i) The extent to which defendant LIRR's employment practices in the areas of recruitment, hiring, testing, application of standards, job assignment, seniority, promotion, pay, training and discipline, discriminate against Black employees, or persons who might become employees;

(ii) The extent to which defendant unions have violated their duty of fair representation by acquiescing or participating in defendant LIRR's discriminatory employment practices;

(iii) The extent to which the promotional and seniority systems established pursuant to the terms of the collective bargaining agreement entered into between defendant LIRR and the respective defendant unions continue and preserve the defedants' policy, practice, custom and usage of limiting the employment and promotional opportunities of Black employees.

The common questions of law include:

(i) Whether defendant's discriminatory employment practices violate Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e et seq., the Civil Rights Act of 1866, 42 U.S.C. §§1981 and 1983 and the Railway Labor Act, 45 U.S.C. §§ 151-163.

(ii) The legality of unions' acquiescence and participation in an employer's discriminatory employment practices;

(iii) The legality of a promotion and seniority system which continues and preserves a policy, practice, custom and usage of limiting the employment and promotional opportunities of Black employees; and

(iv) The appropriateness of the relief to be ordered in behalf of the class.

f) The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole.

II. PARTIES

3. Plaintiff Frances Joy Capers is a Black citizen of the United States and is a resident of the Borough of Queens, City and State of New York. At all times pertinent herein Plaintiff Capers was employed by defendant L.I.R.R. at its facilities in Jamaica, Borough of Queens, New York City as a Personnel Interviewer-Employment and/or as a Clerk in Employee Benefits.

4. Plaintiff Vivian Wright is a Black citizen of the United States and a resident of Lido Beach, Nassau County, State of New York. Since June 10, 1965, Plaintiff Wright has been employed as a clerk in defendant LIRR's office located in Jamaica, Borough of Queens, New York City. At all times pertinent herein, Plaintiff Wright has been a member of

defendant Local 0177, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and defendant Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees.

5. Plaintiff Marshall Jackson is a Black citizen of the United States and a resident of the Borough of Queens, City and State of New York.

6. Plaintiff Edward Harris is a Black citizen of the United States and a resident of the Borough of Queens, City and State of New York. Since 1954, Plaintiff Harris has been employed by defendant L.I.R.R. as a mail handler or as an usher. At all times pertinent herein, Plaintiff Harris has been a member of defendant Sunrise Lodge #90, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and defendant Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station employees.

7. Plaintiff Ernest Brown is a Black citizen of the United States and a resident of the Borough of Brooklyn, City and State of New York. From July, 1967 until April, 1972, Plaintiff Brown was employed by defendant L.I.R.R. in its Jamaica, New York facility as a brakeman. At all times pertinent herein Plaintiff Brown has been a member of defendant Local 517A, United Transportation Union, and defendant United Transportation Union.

8. Plaintiff John Diggs is a Black citizen of the United States and a resident of Wyandach, Long Island, New York. From January, 1950 until on or about May 23, 1972, Plaintiff Diggs was employed by defendant L.I.R.R. as an upholsterer in its facility at Morris Park, Borough of Queens, City and State of New York. Plaintiff Diggs, at all times pertinent herein,

was a member of defendant Local 886, Brotherhood Railway Carmen of America and defendant Brotherhood Railway Carmen of America.

9. Plaintiff Charles Allen is a Black citizen of the United States and a resident of the Borough of Manhattan, City and State of New York. Plaintiff Allen has been employed by defendant L.I.R.R. as a machinist since 1966. At all times pertinent herein Plaintiff Allen has been a member of Local 754 International Association of Machinists and Aerospace Workers, and the International Association of Machinists and Aerospace Workers.

10. Plaintiff Kenneth Morris is a Class A machinist who has been employed by defendant L.I.R.R. as a machinist since 1962. Plaintiff Morris is a Black citizen of the United States and a resident of Jackson, New Jersey.

11. Plaintiff James Van Ness is a Black citizen of the United States and a resident of the Borough of Brooklyn, City and State of New York. Plaintiff Van Ness is employed by defendant L.I.R.R. as a machinist. At all times pertinent herein Plaintiff Van Ness has been a member of defendant International Association of Machinists Local 754 and the International Association of Machinists.

12. Plaintiff Albert Stroman is a Black citizen of the United States and a resident of the Borough of Queens, City and State of New York. Plaintiff Stroman has been employed by defendant L.I.R.R. since September, 1961 as a crossing watchman, a trackman, a fireman or apprentice engineer and a regular locomotive engineer.

13. Plaintiff Howard R. Outerbridge is a Black citizen of the United States and is a resident of the Borough of Manhattan, City and State of New York. Plaintiff Outerbridge has been employed by defendant L.I.R.R. since April, 1955 as a crossing

watchman, laborer, blacksmith helper, blacksmith mechanic and coach cleaner. He has been a member of defendant International Brotherhood of Boilermakers and Blacksmiths and is presently a member of defendant Brotherhood of Railway Carmen and its Local 886.

14. Defendant L.I.R.R. is a commuter and passenger railroad operated by the Metropolitan Transity Authority, an agency of the State of New York. Defendant railroad maintains its headquarters and certain other facilities in Jamaica, Borough of Queens, and does business at Pennsylvania Station, Borough of Manhattan, City and State of New York. Having approximately 7,400 employees defendant L.I.R.R. is a "person" within the meaning of 42 U.S.C. §2000e-(a) and an employer within the meaning of 42 U.S.C. 2000e-(b). Defendant L.I.R.R. is subject to the provisions of 42 U.S.C. §§1981 and 1983.

15. Defendant Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as "B.R.A.C.") is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that defendant B.R.A.C. exists for the purpose, in part, of dealing with defendant L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant B.R.A.C. has more than 25 members, is engaged in an industry affecting commerce, and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

16. Defendants Sunrise Lodge #90, Local 0177, and Transportation-Communication Division, B.R.A.C. are unincorporated associations and labor organizations within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that defendants Sunrise Lodge, Local 0177 and Transportation-Communication Division exist for the purpose, in whole or in part, of dealing with defendant

L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendants Sunrise Lodge, Local 0177, and Transportation-Communication Division are agents and part of defendant B.R.A.C. They are engaged in an industry affecting commerce; each has more than twenty-five (25) members and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

17. Defendant Brotherhood Railway Carmen of America (hereinafter referred to as "B.R.C.") is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that defendant B.R.C. exists for the purpose, in part, of dealing with defendant L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant B.R.C. is engaged in an industry affecting commerce, has more than twenty-five (25) members, and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§ 151-163.

18. Defendant Local 886, B.R.C. is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that defendant Local 886 exists for the purpose, in whole or in part, of dealing with defendant L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant Local 886 is an agent and a part of defendant B.R.C. It is engaged in an industry affecting commerce, has more than twenty-five (25) members and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

19. Defendant International Association of Machinists and Aerospace Workers (hereinafter referred to as "I.A.M.") is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that defendant I.A.M. exists for the purpose, in part, of dealing

with defendant L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant I.A.M. is engaged in an industry affecting commerce, has more than twenty-five members and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

20. Defendant Local 754, I.A.M. is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that defendant Local 754 exists for the purpose, in whole or in part, of dealing with defendant L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant Local 754 is an agent and a part of defendant I.A.M. It is engaged in an industry affecting commerce, has more than twenty-five (25) members and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

21. Defendant United Transportation Union (hereinafter referred to as "U.T.U.") is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §2000e-(d) and 2000e-(e) in that it exists for the purpose, in part, of dealing with defendant L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant U.T.U. is engaged in an industry affecting commerce, has more than twenty-five (25) members and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

22. Defendants Locals 517 A, 645, 645B, 1831 and 1834 U.T.U. are unincorporated associations and labor organizations within the meaning of 42 U.S.C. §§2000e-d(d) and 2000e-(e) in that they exist for the purpose, in whole or in part, of dealing with defendant L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment.

Defendant Locals 517A, 645 645B, 1831 and 1834 are agents and parts of defendant U.T.U. They are engaged in an industry affecting commerce, have more than twenty-five (25) members, and are subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§ 151-163.

23. Defendant Brotherood of Locomotive Engineers (hereinafter referred to as "B.L.E.") is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that it exists for the purpose, in whole or in part, of dealing with defendant LIRR concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant B.L.E. is engaged in an industry affecting commerce, has more than twenty-five (25) members and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

24. Defendants Local Lodges 851, 851-A, 853 and 857, American Railway Supervisors Association (hereinafter referred to as "A.R.S.A."), are unincorporated associations and labor organizations within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that they exist for the purpose, in whole or in part, of dealing with defendant L.I.R.R. concerning grievance, labor disputes, wages, rates of pay and other terms and conditions of employment. They are engaged in an industry affecting commerce, have more than fifteen (15) members and are subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

25. Defendant International Brotherhood of Electrical Workers (hereinafter referred to as "I.B.E.W.") is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that it exists for the purpose, in whole or in part, of dealing with defendant LIRR concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant I.B.E.W. is engaged in an industry affecting commerce, has more than twenty-five (25) members and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

26. Defendant International Brotherhood of Teamsters (hereinafter referred to as "I.B.T.") is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that defendant I.B.T. exists for the purpose, in part, of dealing with defendant L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant I.B.T. is engaged in an industry affecting commerce, has more than twenty-five (25) members, and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

27. Defendant Local 808, I.B.T. is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that defendant Local 808 exists for the purpose, in whole or in part, of dealing with defendant L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant Local 808 is an agent and a part of defendant I.B.T. It is engaged in an industry affecting commerce, has more than twenty-five (25) members and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

28. Defendant Local Lodge #56, Brotherhood of Railway Signalmen, is an unincorporated association and a labor organization within

the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that defendant Local Lodge #56 exists for the purpose, in whole or in part, of dealing with defendant L.I.R.R. concerning grievances, labor disputes, wates, rates of pay and other terms or conditions of employment. It is engaged in an industry affecting commerce, has more than twenty-five (25) members and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

29. Defendant Local 311, International Brotherhood of Fireman and Oilers, Helpers, Roundhouse and Railway Shop Laborers is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §2000e-(d) and 2000e-(e) in that it exists for the purpose, in part, of dealing with defendant L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant Local 311 is engaged in an industry affecting commerce, has more than twenty-five (25) members and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

30. Defendant Local Lodge #91, Railroad Yardmasters of America, is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §§2000e-(d) and 2000e-(e) in that it exists for the purpose, in whole or in part, of dealing with defendant L.I.R.R. concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment. Defendant Local Lodge #91 is engaged in an industry affecting commerce, has more than twenty-five (25) members, and is subject to the provisions of 42 U.S.C. §1981 and 45 U.S.C. §§151-163.

31. Defendant Local 138, Sheet Metal Workers International Association is an unincorporated association and a labor organization within the meaning of 42 U.S.C. §2000e-(d) and 2000e-(e) in that it exists for the purpose, in whole or in part, of dealing with defendant LIRR concerning grievances, labor disputes, wages, rates of pay and other terms or conditions of employment.

Defendant Local 138 is engaged in an industry affecting commerce, has more than twenty-five (25) members and is subject to the provisions of 42 U.S.C. §§1981 and 45 U.S.C. §§151-163.

32. At all times material herein defendant unions and defendant locals have been the certified recognized representatives under the Railway Labor Act of the plaintiffs and the class they represent and, as such, have the duty under the Railway Labor Act to act impartially and to fairly represent the interests of plaintiffs and the class they represent.

33. All matters regarding compensation, terms, conditions and privileges of employment of the plaintiffs and the class they represent have been, at all times material to this action, governed and controlled by collective bargaining agreements entered into between defendants labor organizations and defendant L.I.R.R.

III. CAUSE OF ACTION

34. From January 13, 1969 until on or about June 22, 1972, Plaintiff Frances Joy Capers was employed by defendant L.I.R.R. as Personnel Interviewer, with responsibility for processing applications for employment. Despite her lack of experience in personnel work, Plaintiff Capers was hired, in part, to assist defendant L.I.R.R. in its purported effort to secure more black and minority employees. Although Plaintiff Capers was promised training by defendant L.I.R.R., such training was never granted. For her work in Personnel, Plaintiff Capers received no salary increase other than mandatory cost-of-living raises. Defendant L.I.R.R.'s failure to train Plaintiff Capers to function with optimum effectiveness is indicative of its lack of interest in securing black employees. Defendant L.I.R.R.'s failure to grant Plaintiff Capers salary increases in line with those received by other comparable management level employees

constituted discrimination against Plaintiff Capers because of her race and color. Plaintiff Capers was required to participate in the referral arrangement, more fully described in ¶¶ 65 and 66, established and maintained by defendant L.I.R.R. and defendant unions. This requirement constituted a discriminatory term and condition of her employment, affecting the quality of her daily life, in that it operated continuously to insult her and to injure other Blacks.

35. On or about June 22, 1972, subsequent to Plaintiff Caper's receipt of a letter from the Equal Employment Opportunities Commission, authorizing the initiation of this action, Defendant L.I.R.R. removed Plaintiff Capers from her position as Personnel Interviewer-Employment, and placed her in the less desirable position of Clerk in Employee Benefits. Plaintiff Caper's new position was created by defendant L.I.R.R. by combining duties customarily performed by clerks and secretaries. In said position Plaintiff Capers is given less responsibility and no opportunity to interview applicants for employment, the primary function which she came to defendant L.I.R.R. to perform. Plaintiffs believe and allege that the removal of Plaintiff Capers from her position in personnel was retaliatory and constituted discrimination against Plaintiff Capers because she opposed defendant L.I.R.R.'s unlawful employment practices and she made a charge, testified, assisted and participated in an investigation proceeding and hearing under Title VII of the Civil Rights Act of 1964 as amended.

36. On or about June 10, 1971, Plaintiff Vivian Wright formally applied for the position of maintenance of way inspector, an advanced clerical position. Despite the fact that as a clerk Plaintiff Wright had performed the same or substantially the same duties as the maintenance of way inspectors, Plaintiff Wright was advised that maintenance and way inspectors were allegedly required to go out and inspect tracks and that such duties were unsuitable for a woman. Plaintiff Wright was so

advised despite the fact that the white males who occupied the position of maintenance of way inspectors were not required to actually go out and inspect railroad tracks. Plaintiffs are informed and on the basis of such information allege that maintenance of way inspectors are not currently required to inspect tracks. Plaintiff Wright's application was denied in June, 1972 and the opening for which she applied was filled by a white, male clerk junior to plaintiff Wright in seniority and experience. Defendant L.I.R.R. thus unlawfully abridged, limited and restricted Plaintiff Vivian Wright's employment opportunities for reasons of race, color and sex.

37. The position of maintenance of way inspector is under the jurisdiction of defendant United Transportation Union. If plaintiff Wright were permitted to transfer to the white, male, job of maintenance of way inspector, she would be required, under the collective bargaining agreement entered into between United Transportation Union and the L.I.R.R., to relinquish the seniority benefits she has already gained. She would be at a competitive disadvantage for purposes of promotion, demotion, etc. vis a vis white male employees who have always had an opportunity to accrue seniority in the position of maintenance of way inspector. At least until 1960 the Constitution of the United Transportation Union explicitly excluded Blacks from membership. Thus the seniority system embodied in the collective bargaining agreements between U.T.U., its locals, and L.I.R.R. operates to limit and classify plaintiff Wright in a way which deprives, or tends to deprive her of employment opportunities, adversely affects her status as an employee, and perpetuates past patterns of discrimination based on race, color and sex.

38. On or about June 24, 1970, Plaintiff Marshall Jackson filed an application for the position of fireman with defendant

railroad. At defendant railroad's insistence Plaintiff Jackson submitted to a physical examination, which included a vision test. Plaintiff Jackson's vision, as measured by the defendant railroad, was found to be below the 20/20 level allegedly required by defendant railroad for prospective firemen, and Plaintiff Jackson's application was rejected ostensibly because his vision failed to meet defendant railroad's putative standard of 20/20. Prior to Plaintiff Jackson's rejection, no fewer than four (4) white applicants for the position of fireman had been accepted and hired despite the fact that each and all of them had vision less than 20/20 as measured by defendant railroad. Although two of said applicants were given subsequent re-examinations on which they allegedly scored 20/20, Plaintiff Jackson was not advised of his right to a re-examination. The other two said white applicants were never re-examined but were hired despite their apparent visual deficiencies. All of the white applicants so accepted despite their failure to meet defendant railroad's alleged visual standards were sons of engineers in the employ of defendant railroad. Moreover, the white applicants had become aware of the job openings earlier than plaintiff Jackson, having been referred for employment by defendant B.L.E. pursuant to the referral arrangement described in ¶¶ 65 and 66.

39. Although defendant L.I.R.R. refused to employ Plaintiff Marshall Jackson in the position of fireman ostensibly because he failed to meet defendant L.I.R.R.'s alleged 20/20 vision requirement, defendant had then and has still employed as firemen men whose vision was and is less than 20/20. Plaintiffs are informed, and on the basis of that information allege that defendant L.I.R.R. has not removed from the position of fireman any man who, upon re-examination, was found to have less than 20/20 vision.

40. Plaintiff Jackson filed a complaint with the Division of Human Rights of the State of New York on July 1, 1970, making

the allegations contained hereinabove in paragraphs 39 and 40. On February 8, 1972, the Division of Human Rights, after conducting four public hearings, found that Plaintiff Jackson had suffered unlawful discrimination at the hands of defendant L.I.R.R. Defendant L.I.R.R. appealed the ruling of the Division of Human Rights. By order dated June 11, 1973, the State Human Rights Appeal Board affirmed the Order of the Division of Human Rights. The L.I.R.R. appealed to the Appellate Division of the State of New York, and the matter is now under submission.

41. Plaintiff Edward E. Harris has been employed by defendant L.I.R.R. as a mail handler and an usher for more than seventeen (17) years. The position of usher is the threshold job of assistant station master (ASM) and is the top union job in the line leading to the position of stationmaster. Petitioner Harris since 1967 sought to be appointed an ASM, but despite his long years of excellent service as an usher Plaintiff Harris' efforts to become an ASM were frustrated by defendant L.I.R.R's determination to deny him that position. Defendant L.I.R.R. required that Plaintiff Harris pass a series of examinations (theretofore not required of other applicants for ASM) and then denied him the position anyway. Plaintiff Harris filed complaints with the New York Division of Human Rights (NYSDHR) in December 1967 and August 1968. In March 1971 Plaintiff Harris filed a third complaint with the NYSDHR alleging that defendant L.I.R.R. was retaliating against him for the filing of the 1967 and 1968 complaints by refusing to promote him from "extra" to regular ASM and by paying him less than all the other "extra" ASMs. As it did in 1967 and 1968, the NYSDHR dismissed Plaintiff Harris' complaint in an Order dated April 28, 1972. The NYSDHR Order was affirmed by the State Human Rights Appeal Board.

42. Plaintiff Harris, from July 1969 to November 29, 1972, functioned as an "extra" ASM with responsibility for filling for

regular ASMs in the event of either illness, vacation, retirement or death. Starting in or about November, 1968 "extra" ASMs received the same pay as regulars whose jobs they cover, and upon the retirement of a regular ASM, the "extra" covering his job was allowed to take the job over on a permanent basis. However, when Plaintiff Harris began functioning as an "extra" ASM he received a lesser rate of pay. In January, 1970, when he discovered that "extra" ASMs were receiving more pay for the same work that he was performing, he complained to defendant LIRR. In or about March, 1970, the pay of other "extra" ASMs was cut back to the pay which Plaintiff Harris had been receiving. Plaintiff Harris covered the job for a retired ASM since approximately February 16, 1972. Despite Plaintiff Harris' ample experience and qualification, defendant LIRR persistently refused to promote him to regular ASM until November 29, 1972. Defendant LIRR's failure and refusal earlier to promote plaintiff Harris to the ASM job on a permanent basis and to pay him according to the work he actually did was because of his race and color, and in retaliation for his filing of charges of discrimination before the NYSDHR.

43. On or about October 4, 1971, Plaintiff Ernest Brown, at that time employed by defendant L.I.R.R. as a brakeman, in compliance with the defendant L.I.R.R's rule that brakemen qualify for the position of conductor, undertook to qualify as conductor by enrolling in defendant L.I.R.R's preparatory class for the conductors examination. Despite the fact that Plaintiff Brown passed the written examination required for eligibility for the position of conductor he was subjected to additional oral examinations by defendant L.I.R.R. on or about April 5, 1972, and June 18, 1972. Said oral examinations were not given to any other applicant in Plaintiff Brown's class but were administered to Plaintiff Brown in an arbitrary and highly subjective manner.

Plaintiff Brown "failed" both oral examinations, and on the basis of such "failures" was denied admission to the rank of conductor, and was suspended from train service in accordance with defendant L.I.R.R's rules.

44. As of May 23, 1972, Plaintiff John Diggs had accumulated some 18 years of seniority as an upholsterer in defendant L.I.R.R's Mill and Upholstery shop. In the Mill and Upholstery shop defendant L.I.R.R. has traditionally assigned upholsterers the relatively light duties of cutting and sewing material strictly on the basis of seniority. Despite the fact that Plaintiff Diggs 18 years experience made him third man in terms of seniority as an upholsterer defendant L.I.R.R. repeatedly passed over Plaintiff Diggs and assigned the coveted cutting and sewing tasks to workers junior to Plaintiff Diggs in experience and seniority. Defendant L.I.R.R's denial of the customary privileges of seniority to Plaintiff Diggs was carried out solely for reasons of race and color.

45. On May 23, 1972, Plaintiff Diggs became involved in an altercation with a fellow employee of defendant L.I.R.R., one Martin Kubis, who is white. Neither Kubis nor Plaintiff Diggs was seriously injured in their brief confrontation. On May 25, 1972, a "hearing" was held to determine Plaintiff Diggs' guilt or innocence of "conduct unbecoming an employee." Despite conflicting testimony as to the cause of the altercation and the manner in which each man struggled, after the hearing Plaintiff Diggs was dismissed from his job. Plaintiffs believe and allege that no "hearing" was held for employee Kubis, and Kubis was allowed to continue working as an upholsterer. Plaintiff Diggs was dismissed because of his race and color. As a result of said unlawful discharge Plaintiff Diggs will be denied eighteen years of accumulated employee benefits to which he

would otherwise be entitled upon retirement after twenty years of service.

46. Plaintiff Charles Allen has worked as a machinist in defendant L.I.R.R's Morris Park, Queens, New York facility for approximately 6½ years. Since December, 1969, Plaintiff Allen has sought unsuccessfully to be promoted to the supervisory position of gang foreman. As a gang foreman, Plaintiff Allen would be in charge of a crew of machinists and certain other skilled craftsman engaged in the maintenance and repair of diesel locomotives. Despite Plaintiff Allen's formal instruction in and ample on the job experience with the maintenance and repair of diesel locomotive engines, defendant L.I.R.R. has repeatedly passed over him and denied him a promotion to gang foreman, even though on several occasions Plaintiff Allen was the senior machinist bidding on the job. The most recent such denial occurred on or about June 21, 1972. Defendant L.I.R.R's failure to promote Plaintiff Allen has been solely because of his race and color.

47. Plaintiff Kenneth A. Morris is a Class A machinist and has worked for ten (10) years as a machinist for defendant L.I.R.R. Plaintiff Morris has taken classes in diesel repair, has taken courses in leadership and has been "high-rated" or allowed to temporarily substitute for gang foremen three (3) times. Despite Plaintiff Morris' experience, training and high-rating, defendant L.I.R.R. has persistently refused and continue to refuse to promote him permanently to gang foreman. On the other hand, defendant L.I.R.R. has promoted to that coveted position white workers with less seniority and experience than Plaintiff Morris. Defendant L.I.R.R's failure to promote Plaintiff Morris to gang foreman has been solely because of his race and color.

48. Plaintiff James Van Ness entered defendant L.I.R.R's apprenticeship program for machinists in June or July, 1963.

In fulfillment of the requirements of that program; Plaintiff Van Ness spent almost 5 years in an on-the-job-training program, the coverage of which included the machanics of diesel locomotives, air equipment and study of the appropriate regulations of the Interstate Commerce Commission. Plaintiff Van Ness completed the apprenticeship program in March, 1968 and automatically became a machinist with one year's seniority. In selecting gang foremen, defendant L.I.R.R. has traditionally given preference to bids from men who it has trained in its apprenticeship program. Since February, 1972, Plaintiff Van Ness has been "high-rated" or allowed to temporarily substitute for gang foremen without taking over their jobs. However, despite Plaintiff Van Ness' completion of the apprenticeship program, his high rating and his eleven (11) years experience with diesel locomotives (2 years in trade school studying diesel repair and maintenance, 5 years in defendant L.I.R.R's apprenticeship program and 4 years as a mechanic), defendant L.I.R.R. has persistently denied him a promotion to gang foreman. Defendant L.I.R.R. has refused to promote Plaintiff Van Ness to gang foreman solely because of his race and color.

49. Plaintiff Albert Stroman was first employed by defendant L.I.R.R. in September 1961, as a crossing watchman. In September 1964 defendant L.I.R.R. abolished plaintiff Stroman's job and laid him off. In March 1965 defendant L.I.R.R. called plaintiff Stroman back into the track department as a track maintainer, a job under the jurisdiction of defendants International Brotherhood of Teamsters and its Local 808. In January 1970 Stroman was permitted to enter engine service, an area from which blacks had previously been excluded, as an engineer apprentice. Engine service is under the jurisdiction of defendant Brotherhood of Locomotive Engineers. Pursuant to the collective bargaining agreement entered into between defendant

B.L.E. and defendant L.I.R.R., Plaintiff Stroman's seniority for purposes of promotion, demotion and lay-off began on the day he entered engine service.

50. In accordance with defendant L.I.R.R.'s requirements, in September, 1971 Plaintiff Stroman passed an examination covering operation rules, signals and other material with which engineers are required to be familiar. By passing the examination, Plaintiff Stroman "qualified" for work as a regular engineer. Although he qualified in September, 1971, Plaintiff Stroman was not allowed to make his first solo run as an engineer until on or about December 25, 1971. Because of Plaintiff Stroman's lack of experience he was accompanied by Road Foreman Miller, a supervisor. After the run, Miller submitted an unfavorable report on Plaintiff Stroman's performance and in January, 1972 Plaintiff Stroman was suspended from engine service and required to re-qualify. In February, 1972 Plaintiff Stroman passed the examination again, thereby "re-qualifying" for work as an engineer. In March, 1972, Plaintiff Stroman was again suspended from engine service for alleged violations of operating rules. He submitted to special training by three L.I.R.R. instructors, and at the end of the extra-ordinary training session Plaintiff Stroman was given a "do-or-die" trial run by L.I.R.R. Supervisor Matarazzo who recommended that Plaintiff Stroman be again suspended from engine service on L.I.R.R.'s main lines. As a result of Matarazzo's report, Plaintiff Stroman was in April, 1972 permanently suspended from main line engine service and restricted to duties in defendant L.I.R.R.'s yard facilities. Since Plaintiff Stroman had less seniority than whites who always had the opportunity to accrue seniority in engine service, he was unable to secure a job in the yard facilities. Thus the seniority system embodied in the collective bargaining agreement between defendant B.L.E. and defendant

L.I.R.R. has operated to deprive Plaintiff Stroman of employment opportunities and perpetuates past patterns of discrimination, i.e., the exclusion of blacks from engine service.

51. Defendant L.I.R.R. has refused to permit Plaintiff Stroman to develop as an engineer by gaining frequent experience in the operation of diesel locomotives, yet it has removed him from engine service for making alleged errors attributable to his lack of experience. Plaintiffs allege that the operational errors, if any, committed by Plaintiff Stroman were errors commonly committed by novice engineers, and that Plaintiff Stroman's removal from engine service constitutes discrimination against him because of his race and color.

52. Plaintiff Stroman was, at the time of his employment in engine service, a member of the Brotherhood of Locomotive Engineers, which was, and is, the representative of locomotive engineers for the purpose of collective bargaining with the L.I.R.R. The collective bargaining agreement then in effect between the defendant L.I.R.R. and defendant B.L.E., contained provisions mandating the holding of a fair and impartial investigation and hearing within 15 days of any violation of the operating rules. No dismissal or suspension may take place without such investigation. The collective bargaining agreement specifically provides for union representation of the accused during the course of fair and impartial investigation.

53. Plaintiff Stroman was never accorded a fair and impartial investigation. The B.L.E. never attempted to intercede in his behalf as it was obliged to do by the terms of the collective bargaining agreement. Although Plaintiff Stroman complained to the union on numerous occasions, the union never challenged either the failure to hold the mandatory investigation or the unusually severe sanctions imposed on Stroman by the

L.I.R.R. On numerous occasions white engineers have committed violations of the operating rules more serious than the ones of which Plaintiff Stroman is accused. Nevertheless, the sanctions imposed on these white engineers were not as severe as those imposed on Stroman. On these occasions, defendant B.L.E. interceded in behalf of its accused white members, thereby reducing the severity of the disciplinary sanctions. The Brotherhood of Locomotive Engineers has, therefore, failed to abide by the duty of fair representation it owed plaintiff Stroman. This failure constituted discrimination against Plaintiff Stroman because of his race and color.

54. Plaintiff Howard R. Outerbridge was first employed by defendant L.I.R.R. in April 1955, as a crossing watchman, a position then under the jurisdiction of the Brotherhood of Maintenance of Way. He made repeated attempts to get various shop jobs that he heard were available, but was always told by defendant L.I.R.R.'s personnel manager that there were no openings. In August 1964 defendant L.I.R.R. abolished Plaintiff Outerbridge's job and assigned him to a laborer job. In October 1964 Outerbridge was permitted to transfer to the Locomotive Shop, an area from which blacks had previously been excluded, as a blacksmith helper. Although he was high-rated as a mechanic, i.e., temporarily assigned to the job of mechanic, several times starting in 1965, he was not promoted to the position of mechanic until 1971. A less senior white, R. D. Gearing, was promoted to mechanic before Plaintiff Outerbridge was promoted. On or about June 26, 1973, defendant L.I.R.R., once again abolished defendant Outerbridge's job, purportedly to accomplish a reduction in force. Subsequently a white helper, D'Esposito, who was not qualified as a mechanic, was temporarily assigned to perform the job which L.I.R.R. had purported to eliminate. Outerbridge was furloughed from the blacksmith shop because he had the least

seniority as blacksmith mechanic, R. D. Baring had less seniority in the blacksmith shop and was not furloughed. No black ever held the job of blacksmith mechanic until 1969. Thus, the seniority system embodied in the collective bargaining agreements between defendant International Brotherhood of Boilermakers and defendant L.I.R.R. has operated to deprive Plaintiff Outerbirdge of employment opportunities and perpetuates past patterns of discrimination, namely, the exclusion of blacks from the blacksmiths shop, and, in particular, from the job of blacksmith mechanic.

55. According to an agreement between defendant L.I.R.R. and defendant International Brotherhood of Boilermakers relating to the reduction in force, Plaintiff Outerbridge should have been placed on a preferred hiring list for re-employment in any position for which he was qualified. Plaintiff Outerbridge is qualified to perform, with the customary training, the jobs of trainman, block operator and car repairman, among others. Defendant L.I.R.R. has refused to re-employ Plaintiff Outerbridge in the positions of trainman and block operator on the ground that he wears eye-glasses. Defendant L.I.R.R. employs white trainmen and block operators who wear eye-glasses.

56. On July 25, 1973 Plaintiff Outerbirdge applied for ten different positions that were posted. The award bulletin for those postings states that no bids were received on two car repairman positions, even though Plaintiff Outerbridge applied for those positions. On information and belief, Plaintiff Outerbridge was not awarded a car repairman job because he is not, under the provisions of the collective bargaining agreement in effect between the defendants Brotherhood of Railway Carmen and its Local 886 and L.I.R.R., eligible to bid on such job even though he is qualified to perform such job. Pursuant to said agreement, defendant L.I.R.R. may place in car repairman jobs only employees who are on a list furnished to the L.I.R.R. by defendant B.R.C. This referral arrangement has a discriminatory impact upon blacks. Thus the provisions of said agreement operate further to limit Plaintiff Outerbridge's

employment opportunities and to perpetua the effects of past discrimination by defendants L.I.R.R. and International Brotherhood of Boilermakers.

57. Not having been able to obtain another assignment, Plaintiff Outerbridge had been placed at the bottom of the Coach Cleaner's roster. His pay has been reduced from $247 per week which he received as a mechanic to $184 per week. Although he has been employed by the defendant L.I.R.R. for 19 years, Plaintiff Outerbridge's seniority for purposes of promotion and lay-off dates from the day he became a coach cleaner. Plaintiff Outerbridge has been required to pay an initiation fee of $150 to the Brotherhood of Railway Carmen, which has jurisdiction over the coach cleaner job.

58. Most of the job categories of defendant L.I.R.R. fall within classes or crafts which have been traditionally either white or black. Blacks have been excluded from, inter alia, the more desirable and better-paying jobs of road passenger conductor, yard conductor, yard foreman, yard brakeman and maintenance of way inspector, which jobs are under the jurisdiction of defendant U.T.U., from the jobs of road passenger engineer and motorman, under the jurisdiction of defendant B.L.E., from office and clerical jobs, and the jobs of agent and block operator, under the jurisdiction of defendant B.R.A.C., from the jobs of car repairman and car inspector, under the jurisdiction of defendant B.R.C., from the job of electrician, under the jurisdiction of defendant I.B.E.W., from the job of machinist, under the jurisdiction of defendant I.A.M., from the jobs of gang foreman, foreman, technical engineer, architect and draftsman, under the jurisdiction of defendant A.R.S.A. locals, from the jobs of boilermaker and blacksmith, under the jurisdiction of defendant I.B.B., from the job of yardmaster, under the jurisdiction of defendant Local Lodge #91, Railroad Yardmasters of America, from the jobs of signalman, signal maintainer, and signal technician, under the jurisdiction of defendant Local Lodge #56, Brotherhood of Railroad Signalmen, from the job of sheetmetal worker under the jurisdiction of defendant Local 138, Sheet Metal Workers

International Association, and from the job of bridge and building mechanic, under the jurisdiction of defendant International Brotherhood of Teamsters.

59. Defendants Brotherhood of Railway Carmen, Brotherhood of Locomotive Engineers, United Transportation Union, Brotherhood of Railway, Airline and Steamship Clerks, International Association of Machinists, International Brotherhood of Boilermakers, and their locals, and defendants Local Lodge #56, Brotherhood of Railway Signalmen and Local Lodge #91, Railroad Yardmasters of America have, in the past, excluded Blacks from membership by constitutional or ritual provision, have maintained segregated locals and separate seniority rosters for whites and blacks, and/or have entered into collective bargaining agreements excluding blacks from the more desirable, higher paying jobs. Defendants International Brotherhood of Electrical Workers and Local 138, Sheet Metal Workers International Association, have had a policy and practice of excluding blacks from membership.

60. Pursuant to seniority systems embodied in the collective bargaining agreements in force between defendant L.I.R.R. and the defendant unions, members of the class represented by the named plaintiffs' cannot transfer from traditionally Black classes and crafts to traditionally white classes and crafts without losing their accumulated seniority. Thus the seniority systems operate to lock Blacks into traditionally Black classes and crafts and to put those who are willing to transfer to those classes and crafts from which blacks have, by defendants' policies and practices, been excluded at a competitive disadvantage with regard to promotions, demotions, shift selection, job assignment and lay-off vis-a-vis whites who have always had an opportunity to accrue seniority in those classes and crafts. The discriminatory effect of the seniority systems is illustrated by the allegations of Plaintiff Vivian Wright, ¶37, Plaintiff Albert Stroman, ¶50, and Plaintiff Howard Outerbridge, ¶54.

61. Defendant L.I.R.R. has instituted and/or maintained policies, practices, customs and usages made unlawful by the Civil Rights Act of 1964 as amended, including but not limited to the use of screening procedures in the hiring of new personnel that discriminate against black applicants for clerical and operating crafts positions. Job applicants must apply for specific positions, and vacancies in these positions are not posted. As indicated by the allegations of plaintiff Marshall Jackson, ¶38, relatives and friends of present employees are given first knowledge of openings, and putative company "standards" set for those positions have been frequently lowered or waived to facilitate the employment of persons so referred. Said practice has resulted in the perpetuation of a predominantly white work force in clerical and operating crafts positions and the concommitant denial of employment opportunities to Black applicants for said positions.

62. Defendant L.I.R.R. has established requirements and conditions for employment in and promotion to certain positions that are not demonstrably related to the safe and efficient performance of the jobs upon which they are imposed. As indicated by the allegations of plaintiff Marshall Jackson, ¶38, and plaintiff Howard Outerbridge, ¶55, said requirements and contions have been used by defendant L.I.R.R. to segregate, limit, classify, restrict and discriminate against Black applicants for employment and Black employees seeking promotions at defendant L.I.R.R.'s facilities and have deprived and continue to deprive them of equal employment opportunities, and otherwise adversely affect their status as employees because of their race or color.

63. Defendant L.I.R.R. has from time to time posted bids for jobs as they became vacant in various departments and/or job categories. As indicated by the allegations of plaintiff Ernest Brown, ¶43, applicants for such jobs may be required to pass a

battery of tests before they become eligible to bid for the job vacancies. Plaintiffs believe and allege that the tests are not professionally developed ability tests within the meaning of 42 U.S.C. §2000e-2(h) and that the use of said tests, their administration and action upon the results is intended to and does discriminate against Black employees because of race and color.

64. Defendant L.I.R.R. has established and maintained a general policy of selecting employees for certain clerical and supervisory positions on the basis of employee experience and seniority in threshold positions which require the performance of tasks similar or identical in nature to those performed in the higher clerical and supervisory positions. Black employees of defendant L.I.R.R. who occupy threshold positions are denied promotions to advanced clerical and supervisory positions while white employees with less experience and seniority in threshold positions than their black co-workers are promoted, as indicated by the allegations of plaintiffs Vivian Wright, ¶36, Edward Harris, ¶41, Charles Allen, ¶46, Kenneth Morris, ¶47 and James Van Ness, ¶48. Defendant L.I.R.R.'s blatantly discriminatory promotional practices limit, restrict and adversely affect the employment opportunities of Black employees because of their race and color.

65. The collective bargaining agreements in effect between defendant L.I.R.R. and defendants Brotherhood of Railway Carmen, Sheet Metal Workers Association, United Transportation Union, Brotherhood of Locomotive Engineers, International Association of Machinists and Brotherhood of Railway Signalmen and International Brotherhood of Electrical Workers and their locals provide for the establishment and operation of formal training and apprenticeship programs for the craft jobs of car repairman, sheetmetal worker, conductor in passenger service, engineer,

machinist, signalman and electrician. Only persons eligible for membership in the respective unions and who were hired into the specific trainee positions can participate in the training programs. The defendant L.I.R.R. selects trainees on the basis of referrals and recommendations by the unions. Defendants have almost totally excluded Blacks from participation in said training and apprenticeship programs, thereby limiting their opportunities for both initial employment and for advancement to craft jobs.

66. In addition to the formal referral system embodied in the provisions of the collective bargaining agreements relating to training programs, defendant L.I.R.R. and defendant unions have established and maintained an informal arrangement whereunder white individuals who are relatives and friends of members of the defendant unions are referred to company by defendant unions for employment in the crafts represented by defendant unions. As a result of the informal referral arrangements between the defendant L.I.R.R. and defendant unions, white applicants for employment are informed of, and thus have the opportunity to apply for job vacancies before black applicant class members can do so and are given preference for such job vacancies. As alleged in ¶38, Plaintiff Marshall Jackson was denied equal employment opportunity when four white applicants who were sons of engineers in the employ of the defendant railroad were informally referred for the position of fireman and were preferentially hired in spite of the failure of at least two of the applicants to meet the defendant railroad's putative vision standards. Having applied for and been hired into specific positions as a result of this referral system the whites so hired are then eligible to participate in training and apprenticeship programs. Said arrangement by the defendant unions in concert with the defendant L.I.R.R. unlawfully limits, segregated and classifies

black applicants for employment in a way that tends to deprive them of employment opportunities by excluding them from the referral arrangement and from training and apprenticeship programs because of their race and color.

67. Defendant unions and defendant locals have violated and continue to violate their duty of fair representation imposed upon them by the Railway Labor Act in that they have acquiesced and/or joined in the unlawful and discriminatory practices complained of herein and they have failed to protect the Black workers of defendant L.I.R.R. from said discriminatory policies and practices. The company has knowingly participated and acquiesced in said violation of the duty of fair representation.

68. Pursuant to the terms of the collective bargaining agreements, mentioned in paragraph 60 the defendants have established a promotional and seniority system which has the purpose and effect of continuing and preserving the defendant's policy, practice, custom and usage of limiting the employment and promotional opportunities of plaintiffs and other Black employees because of their race and color.

IV. E.E.O.C. COMPLIANCE

69. On August 28, 1970 plaintiff Frances Joy Capers submitted written charges under oath on behalf of members of the class with the Equal Employment Opportunity Commission, alleging denial on account of race by defendant Long Island Railroad and those unions which have jurisdiction over its employees of plaintiffs' rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et. seq. In accordance with § 706(d) of Title VII of the Act, the Commission deferred the charges to the New York State Division of Human Rights. On September 5, 1972, plaintiff Vivian Wright submitted a written charge under oath with the Equal Employment Opportunity Commission

alleging denial by the defendant Long Island Railroad of her rights under Title VII on account of sex. Plaintiff Diggs has also filed timely charges with the NYSDHR. On January 13, 1972, the Commission found reasonable cause to believe that defendant Long Island Railroad and defendant Unions had committed violations of the Act. A copy of said finding is attached hereto as Exhibit "A".

70. By letter dated April 24, 1972, plaintiff Capers was advised that she was entitled to institute a civil action against defendant L.I.R.R. in the appropriate Federal District Court within 90 days of her receipt of said letter. By letters dated December 13, 1972, plaintiff Capers was advised that she was entitled to institute civil actions against the following unions:

Brotherhood Railway Carmen of America;

Brotherhood of Locomotive Engineers;

Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express & Station Employees;

International Association of Machinists and Aerospace Workers,

in the appropriate Federal District Court within 90 days of her receipt of said letters. By letters dated January 2, 1973, plaintiff Capers was advised that she was entitled to institute civil actions against the following unions:

Local 0177, Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express & Station Employees;

Local 754, Int'l of Machinists & Aerospace Workers;

United Transportation Union;

Local 517A, United Transportation Union;

Sunrise Lodge #90, Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express & Station Employees;

Local 886, Brotherhood of Railway Carmen of America, in the appropriate Federal District Court within 90 days of her receipt of said letters. By letters dated September 27, 1973 plaintiff

Capers was advised that she was entitled to institute civil action against the following unions:

Local Lodges 851, 851A, 853, and 857, American Railway Supervisors Association

Local 138, Sheet Metal Workers International Association

Local #56, Brotherhood of Railway Signalmen

Local Lodge #91, Railway Yardmasters of America

Transportation - Communication Division of BRAC

Local 808, International Brotherhood of Teamsters

International Brotherhood of Teamsters

International Brotherhood of Boilermakers and Blacksmiths

International Brotherhood of Electrical Workers

Locals 645, 645B, 1831 and 1834, United Transportation Union.

This suit was within 90 days of plaintiff Capers receipt of the Notice of Right to Sue defendant L.I.R.R., and motions to amend to add the unions as defendants were timely made.

71. As a result of defendants' customs, practices, traditions and arrangements plaintiffs and the members of their class have been, are and will continue to be limited, classified and discriminated against in ways which deprive them of equal employment opportunities and otherwise adversely affect their status as employees because of their race and color.

V. PRAYER FOR RELIEF

72. Plaintiffs and the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a preliminary and permanent injunction

is their only means of securing adequate relief. Plaintiffs and the class they represent are now sufferning and will continue to suffer irreparable injury from the defendants' policies, practices, customs and usages as set forth herein.

WHEREFORE, plaintiffs respectfully pray this Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case to in every way be expedited and upon such hearing to:

A. Grant plaintiffs and the class they represent a declaratory judgment that the actions complained of herein violate the rights of plaintiffs and the class they represent guaranteed by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq., the Civil Rights Act of 1866, 42 U.S.C. §§1981 and 1983, and the Railway Labor Act 45 U.S.C. §§151-163.

B. Grant plaintiffs and the class they represent a preliminary and permanent injunction prohibiting the defendants, their agents, successors, employees, attorneys and those acting in concert with them from engaging in the policies and practices complained of herein, or any racially or sexually discriminatory employment practices, inviolation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq., the Civil Rights Act of 1866, 42 U.S.C. §§1981 and 1983 and the Railway Labor Act, 45 U.S.C. §§151-163.

C. Grant plaintiffs and the class they represent full relief from the effects of defendants' past discrimination, including:

i) Promotional opportunities for plaintiffs and other class members sufficient to allow them to gain their rightful place with respect to their employ without loss of seniority;

ii) An award of back pay representing the amount of due compensation lost by plaintiffs and other class members as a result of defendants' acts and practices of discrimination;

iii) Rate protection sufficient to assure that Black employees will not be economically discouraged, prevented, or

penalized in their efforts to attain their rightful place in L.I.R.R.'s employ;

D. Retain jurisdiction for a period sufficient to assure full compliance with the terms of the decree prayed for herein and all other requirements of federal law, and during the period of such retained jurisdiction require full and regular reporting of information pertaining to such compliance;

E. Award plaintiffs and the class they represent the costs of this action together with reasonable attorney's fees;

F. Grant plaintiffs and the class they represent such other relief as may be deemed necessary and proper to afford plaintiffs full and effective relief from all the effects of defendants' unlawful acts and practices.

Respectfully submitted,

JACK GREENBERG
DEBORAH M. GREENBERG
10 Columbus Circle
New York, N. Y. 10019

RICHARD HOLWELL
VINCENT FITZPATRICK
14 Wall Street
New York, N. Y. 10005

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FRANCES JOY CAPERS, et al., each individually and on behalf of all other persons similarly situated,	:	72 Civ. 3160 (LPG)
Plaintiffs,	:	ORDER TO SHOW CAUSE
-against-	:	
LONG ISLAND RAILROAD, et al.,	:	
Defendants.	:	

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Copy Recd Pltf's Stipulation Hearing for Long Island Railroad 9/17/74

Upon the annexed Affidavits of Thomas McGanney, Esq. and Edward E. Harris, sworn to September 16, 1975,

And it appearing to the Court that immediate and irreparable injury, loss or damage will result to plaintiff Edward E. Harris if defendant is not restrained from removing said plaintiff from his position of Assistant Station Master in that he will be unable to re-attain that position once having lost it, and it further appearing to the Court that counsel for plaintiff has complied with the notice requirements of Rule 65 of the Federal Rules of Civil Procedure, it is

ORDERED, that defendant show cause in Room 28:04 of the United States Courthouse, Foley Square, Borough of Manhattan, City of New York on the 24th day of September, 1975, at 10:00 A.M., or as soon thereafter as counsel can be heard why an order should not be entered herein pursuant to Rule 65 on rule of the Federal Rules of Civil Procedure for a preliminary injunction enjoining during the pendency of this action defendant and their officers, agents, servants and

all persons acting under their control and each of them from removing Mr. Harris from his present position as Assistant Station Master and awarding to Mr. Harris reasonable counsel fees in connection with bringing this motion, and it is further

ORDERED, that plaintiff is hereby granted expedited discovery so that ~~answers to the interrogatories attached hereto be answered by the Railroad and served upon plaintiff's counsel by no later than _____, 1975, that the document request attached hereto be complied with by the Railroad no later than _____, 197_ the deposition of the Railroad by the employee L. J. Rizzacasa to be held at ~~a time and place convenient to the parties prior to~~ on September 23, 1975, and ~~that a status hearing on the progress~~ of such expedited discovery be held before this Court in ~~Room~~ _____, on _____, 1975, and it is further

LPG

~~ORDERED, that pending hearing and determination of~~ said motion, defendant and its officers, agents, servants and employees and all persons acting under their control and each of them are temporarily restrained from taking any action to remove Mr. Harris from his position of Assistant Station Master. This temporary restraining order is granted upon the condition that plaintiff file an undertaking for a bond as required by Federal Rules of Civil Procedure 65(c) in the amount of $ for the payment of such cost and damages that may be incurred or suffered by any party who is found to be wrongfully enjoined or restrained. Sufficient cause appearing therefor, service on defendant of a copy

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~~of this Order to Show Cause, together with copies of the supporting papers on or before the 16th day of September, 1975 shall be deemed sufficient service.~~

LPG

U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FRANCES JOY CAPERS, et al., each individually and on behalf of all other persons similarly situated,	:	72 Civ. 3168 (LPG)
Plaintiffs,	:	AFFIDAVIT
-against-	:	
LONG ISLAND RAILROAD, et al.,	:	
Defendants.	:	

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STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

THOMAS McGANNEY, being duly sworn, deposes:

1. I am a member of the Bar of this Court and of the firm of White & Case, attorneys for FRANCES JOY CAPERS, et al., each individually and on behalf of all other persons similarly situated, plaintiffs in this action. I make this Affidavit in support of the annexed Order to Show Cause and Temporary Restraining Order, and in compliance with Rule 65 of the Federal Rules of Civil Procedure.

2. The relevant facts are set forth in the Affidavit of Mr. Edward E. Harris annexed to the Order to Show Cause. The Affidavit states that the defendant in retaliation for Mr. Harris' suit against the defendant and as a further act of discrimination against him, has removed him from his position of Assistant Station Master without a hearing on the grounds of insubordination and improper announcement and posting of track changes on September 12, 1975, although, on Mr. Harris' information and belief, no similarly situated white employee has ever been taken out of service for such reasons.

3. As set out more fully in Mr. Harris' affidavit, on September 20, 1974 this Court conducted an evidentiary hearing in connection with a prior application for a preliminary injunction on behalf of Mr. Harris. In August 1974 the defendant removed Mr. Harris from service as an Assistant Station Master ("ASM") at Penn Station for alleged failure of a Book of Rules examination which plaintiffs contended was conducted in a manner never previously resorted to with respect to white employees similarly situated. During the course of Mr. Harris' direct examination at that hearing, and at the Court's suggestion, the matter was resolved when the defendant agreed to continue Mr. Harris as an ASM if he passed a Book of Rules examination given to a randomly selected group of employees similarly situated. Mr. Harris subsequently received the highest score of the seven Assistant Station Masters taking the test and was continued in the position.

4. I have been informed by Todd B. Sollis, Esq., an associate of White & Case, that discussions relating to this matter have been carried on between Lawrence P. Rubin, Esq., a staff attorney for the Long Island Railroad, representing defendant and Mr. Sollis, representing Mr. Harris. On September 16, 1975 when Mr. Rubin indicated that defendant would not reinstate Mr. Harris as an Assistant Station Master, he was advised by Mr. Sollis that plaintiff would apply to this Court for a Temporary Restraining Order at 10:00 a.m. on September 17, in Room 2804.

5. No previous application for this relief has been made other than the relief sought in 1974 as discussed in paragraph 3 herein.

Thomas McGanney

Thomas McGanney

Sworn to before me this
16th day of September, 1975.

Frederick S. Newman

Notary Public

FREDERIC S. NEWMAN
Notary Public, State of New York
No. 31-2133400
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FRANCES JOY CAPERS, et al., each individually and on behalf of all other persons similarly situated,

Plaintiffs,

-against-

LONG ISLAND RAILROAD, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - x

72 Civ. 3168 (LPG)

AFFIDAVIT

State of New York)
: ss.:
County of New York)

EDWARD E. HARRIS, being duly sworn, says:

1. I am a black citizen of the United States, and an employee of defendant, Long Island Railroad (the "Railroad"), and a member of a class of plaintiffs bringing this lawsuit. I make this affidavit in support of my motion for a temporary restraining order restraining the Railroad from future violations of my rights under Title VII of the Civil Rights Act of 1964 and ordering the Railroad to reinstate me in the position of Assistant Station Master ("ASM").

2. This is the second time in slightly over twelve months that I have been forced to appear before this Court to seek injunctive relief as a result of the Railroad's retaliatory measures taken against me as a plaintiff in this action. I was forced to seek injunctive relief in August 1974 when the Railroad attempted to remove me on spurious grounds from my position of ASM. The history of the Railroad's discriminatory activities against me is contained in my affidavit which was submitted in support of that 1974 motion, a copy of which is attached hereto as Exhibit 1, and the Court is respectfully

directed to that Exhibit.

3. Generally speaking, the Railroad attempted to remove me in 1974 from ASM to the lower ranking "usher" status on the purported grounds that I had "failed" an examination which the Railroad demanded that I take and which examination was not required of other ASM's. As a result of my motion, this Court ordered that the Railroad immediately maintain me in my position of ASM with the same seniority and pay status pending the outcome of a hearing on the preliminary injunction motion. During the course of my testimony on September 20, 1974 at the preliminary injunction hearing, and at the suggestion of the Court, the matter was resolved when the Railroad agreed to maintain me as an ASM if I passed another Book of Rules examination which would be administered to me and six of the eleven other ASM's. I took this examination and scored higher than any other ASM selected to be similarly tested.

4. The Railroad was apparently unsatisfied with this result and has continued their pattern of harrassing tactics in retaliation for my decision to be a plaintiff in this Title VII action against them. On September 12, 1975 I was taken out of service on the alleged charge of committing an "insubordinate act." (See the letter of J.J. Gaynor to me dated September 12, 1975 attached hereto as Exhibit 2).

5. The "insubordinate act" to which the letter refers concerns an allegedly tardy announcement of a change of tracks for a departing train - an incident which undoubtedly occurs thousands of times every year without repercussion as a result of any number of human or mechanical failures. Such an incident, to the best of my knowledge, has never before resulted in anyone being removed from service.

6. On the evening of Thursday, September 11, 1975, when I began my work as ASM at Penn Station, my immediate superior on the night shift, Mr. Bob Landsperg, an Assistant Terminal Trainmaster at Penn Station, told me that he had received a letter from Mr. Picaut, another Assistant Terminal Trainmaster at Penn Station, stating that Mr. J.J. Gaynor, Terminal Superintendent, had ordered a procedure change in the departure of two trains: train number PWA-648, a non-passenger train departing at 6:48 a.m. and train 708, a passenger train, normally departing from Penn Station at 6:51 a.m. Both trains depart from the same platform - one on track 15, the other right across the platform on track 16. The letter stated that Mr. Gaynor had decided that if it appeared that there would be any delay in the arrival of equipment to be used for PWA-648 or any other delays on that train, plans were to be made to transfer equipment from train number 708 which normally would depart at 6:51 and to use that equipment as train number PWA-648. In essence, the equipment for 708 was to be used as PWA-648 and the equipment which normally arrives in the station as train 1611 and which would have been used as PWA-648 would then be used as passenger train number 708.

7. Early Friday morning, September 12, 1975, Mr. Landsperg and I were informed by Harold tower that the incoming train (number 1611) which would eventually be used as PWA-648 would be late in arriving at Penn Station. We therefore commenced to carry out Mr. Gaynor's instructions and decided to switch the train scheduled to depart as number 708 for that which would normally have been used as the PWA-648. Again, in essence, this meant that passengers for the number 708 train departing at 6:51 a.m. would be required to cross the platform to a train on the track opposite from that which their train normally departed.

8. I personally informed the crews of both trains

of the switch and the equipment which would have been number 708 departed as PWA-648 at approximately 6:40 a.m. Prior to this time I spoke to Mr. Sherer, the usher on the platform, and told him to post and verbally announce the change. I also called Mr. Simmons, in the ticket office, and told him of the track change. Apparently Mr. Sherer did not immediately post the change, although he did make the public announcement to those passengers.

9. While I was attempting to finish my paper work and conclude my work day at the normal quitting time of 7:00 a.m., Mr. L. J. Rizzacasa, the Terminal Trainmaster burst into the office screaming "Why haven't you made the track change announcement". I asked him what changes he was referring to because I had already taken care of the switch concerning train 708. He continued to rant and rave at me until I reminded him that Mr. Landsperg, [my boss and his subordinate] was in charge. When I am on duty, I must follow Mr. Landsperg's instructions. His reply to me was "Don't tell me who is in charge, you are responsible for making track changes, and you are out of service."

10. I was so shocked by his statement in light of the common place nature of the alleged error and the fact that I had fulfilled my responsibility in that regard, that I packed up my belongings and left. As I reached the platform for my train home, I noticed that the usher was in the process of posting the change in tracks and I heard the announcement being made by the usher. I boarded number 708, the very train over which the controversy leading to my termination had centered, and by my watch it was right on time in departing the station. Indeed, some passengers were already asleep on the train by the time I boarded it.

11. In light of the Railroad's discrimination

against me in the past for my role as a plaintiff in this action, in light of the de minimus nature of the harm resulting from this common slip-up, and in light of the nature of the "insubordinate act" for which I was removed from service, I can only conclude that it is only a part of the Railroad's plan to continue to punish me for my participation as a class member in this case. Although I have been a loyal Railroad employee for 21 years, the Railroad's retaliatory measures leave me with only my seniority of an usher. All seniority for purposes of future layoffs and promotions which I accrued as an ASM will be lost. In addition to my great reduction in pay and the humiliation I have suffered as a result of this continuing pattern of discrimination and retaliation, it is highly likely that the Railroad will attempt to fill my position with another employee. Once this is done, the Railroad will have raised yet another barrier to regaining a position that has twice been wrongfully taken from me. Equally unjust is the fact that this retaliation centers upon my participation in an action which seeks to compel the Railroad to obey the laws of the United States.

12. On the basis of this affidavit and the prior history of this action, I request this Court to order the Railroad to immediately cease its continuing discriminatory and retaliatory tactics against me, to immediately reassign me to my former position as an ASM with the stipulation that no further such actions be taken against me by the Railroad except upon order of this Court and for good cause shown pending the outcome of this action and to award me counsel fees in connection with the bringing of this motion.

Edward E. Harris

Edward E. Harris

Sworn to before me this

16th day of September, 1975.

Janet M. Fates
Notary Public

JANET M. FATES
Notary Public, State of New York
No. 52-4521922
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires March 30, 1976

Chairman and
Chief Executive Officer
David L. Yunich

Members of the Board
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Leonard Braun
William L. Butcher
Donald H. Elliott
Justin N. Feldman
Harold L. Fisher
Mortimer J. Gleason
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Eben W. Pyne
Constantine Sidamon-Eristoff

The Long Island Rail Road

Jamaica Station Jamaica, New York 11435 Phone 212 JAmaica 6-0900

September 12, 1975

Mr. E. E. Harris
187-15 Nashville Boulevard
Springfield Gardens, N. Y.

Dear Sir:

This is in accordance with your insubordinate act with Mr. L. J. Rizzacasa, Terminal Trainmaster. As per his direct order to you to make the proper track changes and accouncements effecting train #708 on this date.

Your reply to Mr. Rizzacasa was don't tell me what to do, you got a Trainmaster here to take care of those duties. This being your responsibility as an Assistant Station Master should have been complied with but you refused to do so.

Effective as of 7:01 A.M., September 12, 1975, you are hereby directed by me to exercise your seniority rights as an usher.

Very truly yours,

J. J. Gaynor
Terminal Superintendent

JJG:lg

Exhibit 2

EXCERPTS FROM PROCEEDINGS OF
U. S. DISTRICT COURT HELD
ON OCTOBER 1-3, 7, 10 AND
NOVEMBER 11, 1975

(Pages A-90 to A-263 following)

MR. HOLWELL: That's correct, your Honor.

THE COURT: All right, proceed.

MR. HOLWELL: The plaintiffs would like to call Mr. Edward Harris to the stand.

XXX E D W A R D H A R R I S, called as a witness, after having been first duly sworn, was examined and testified as follows:

XXX DIRECT EXAMINATION

BY MR. HOLWELL:

Q Mr. Harris, would you state your age, please?

A 54.

Q What is your race?

A Black.

Q Could you tell us what your educational background, Mr. Harris, is as far as schools you have attended?

A I finished high school and acquired a scholarship for four years at City College, business administration, and I was working for the Railroad at the time and managed to complete only about two of those years.

Q Did you have any other educational training?

A Yes. I am a graduate of the American Theatre Wing.

Q By whom are you employed, Mr. Harris?

A Long Island Railroad.

Q How long have you worked for the Railroad?

A About 21 years.

Q What was the first job you had with the Railroad?

A Mail handler.

Q How long did you stay in that job?

A From 1954 to approximately '63.

Q What job did you move to after working as a mail handler?

A The job as an usher.

Q Is the usher a union job, Mr. Harris?

A It is.

Q What union has jurisdiction over that job?

A The Brotherhood of Railway Clerks.

Q Could you explain to me in your own words what duties and functions an usher performs?

A The usher is the right arm of the station master. He operates, he gives information in the station.

Q Continue, Mr. Harris.

A He gives information in the station in regards to train departures and arrivals, if he knows at the time, and he puts up signs to explain the time of departure of trains, their destination. Ushers are the man that you

will come in contact with in uniform in the railroad station. These are the men that will tell you where to go if you wish to take a particular train.

Say, for instance, you are going to Long Beach, you ask an usher where is the next train to go to Long Beach. He will give you the time and the place and he facilitates the whole operation of the station.

B2 Q How long did you work as an usher, Mr. Harris?

A Excuse me just a moment.

Q Sure.

A In addition to this he also announced the trains and their destinations.

Q Is there anything else that he does or is that a general description of his duties?

A That's generally what he does.

Q How long did you perform these duties as an usher, Mr. Harris?

A From '63 to '72.

Q After working as an usher for nine years what was your next position in the Railroad?

A My next position was stationmaster. Assistant stationmaster, I am sorry.

Q Is the assistant stationmaster's job a union job; is it covered by a collective bargaining agreement?

A No, it is not.

Q Is it considered a management job?

A It is considered a management job.

Q Perhaps you could describe in your own words again what the duties and functions of an assistant station manager are.

MR. STOKES: Excuse me, your Honor, I thought all witnesses were excluded from the courtroom.

THE COURT: So did I.

MR. STOKES: I believe there is still a witness in the room, or are you not going to call Mr. Sherer?

MR. HOLWELL: We moved to exclude your witnesses, not ours.

MR. STOKES: Then I will so exclude all witnesses.

THE COURT: Yes, all right.

Q I am sorry, Mr. Harris, you were telling us what your duties and functions as an assistant stationmaster are.

A In general an assistant stationmaster administers the operation in the station under the direction of the trainmaster or the terminal superintendent, in this case, or both as is the case at Penn Station. We have a terminal superintendent and a terminal trainmaster, as well as assistant trainmasters.

Now, the assistant stationmaster functions under these individuals and his duties are generally to administer the operation of the station to see that the order and protection of passengers are maintained, to see that the station is policed, to record inbound and outgoing trains, to see that the station is cleaned and the general operation of the station, to see that various announcements are made in relation to the train departures, et cetera.

MR. HOLWELL: I have Exhibit 1, your Honor. Would you like to look at these exhibits before we hand them to the witness?

THE COURT: Yes. All the other pages are somewhat similar to page number 1, is that so?

MR. HOLWELL: That's correct, your Honor.

Q Mr. Harris, I show you Plaintiff's Exhibit 1 and I ask you if you recognize the document.

A Yes, I do.

Q Can you tell me what it is?

A It's a stationmaster's train record sheet.

Q Is this a document that you would keep in the normal course of your business?

A That's correct.

MR. HOLWELL: We would like to offer this into evidence, your Honor.

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THE COURT: No objection?

MR. STOKES: I have no objection.

THE COURT: Received.

XXX (Plaintiff's Exhibit 1 received in evidence.)

MR. STOKES: The only question I would ask counsel is is that for a specific day?

MR. HOLWELL: The document reads on the top of it effective 5/20/74.

MR. STOKES: No, I mean the sheets--

THE COURT: Let Mr. Harris look at it and he will know.

Q Can you explain to me--

THE COURT: Is that for a specific day?

THE WITNESS: This is a train record sheet for--in this case, this is Monday to Friday only, weekdays.

Q Could you explain to me, Mr. Harris, what functions you perform in keeping this record and what that record is for?

A This is a record sheet that tells us when our trains are approaching the station. When it reaches Long Island City we have a Harold Tower. This tower reports to us whether that train is on time or not. This is recorded at that time as well as when this train arrives in the station. It also records the departure of trains

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that are leaving or eastbound trains. If a train leaves on time it is recorded. If it leaves late, the amount of lateness if recorded.

THE COURT: When do you get this sheet?

THE WITNESS: This sheet is kept in the stationmaster's office and when I report to work at night I take the starter sheet for each day. The sheet lasts 24 hours.

THE COURT: It is nothing you get in advance, it's a running record as to what's happening; is that it?

THE WITNESS: That's correct.

THE COURT: It is when they arrive at certain towers, is that it?

THE WITNESS: Yes.

Q Is this typical of the type of job that you perform as an assistant station manager, Mr. Harris?

A This is typical.

Q Do you recall the exact date, Mr. Harris, that you became a permanent assistant stationmaster?

A On November 29, 1972.

Q Prior to November 29, 1972, when you became a permanent assistant stationmaster, had you ever done any work as an assistant stationmaster?

A Yes, I had.

Q What capacity did you work during that period of

MR. HOLWELL: I would like to show to the Court Plaintiffs' Exhibit No. 2.

THE COURT: What is the date of that?

MR. HOLWELL: August 2, 1967.

MR. STOKES: No objection.

*** (Plaintiffs' Exhibit 2 received in evidence.)

Q I show you Plaintiffs' Exhibit 2. Is that the letter you sent to Mr. House and others at the railroad?

A This is the letter.

Q Did you get any response from the railroad after you wrote this letter, Mr. Harris?

A Yes, I did receive a letter from Mr. A. B. House.

Q What did Mr. House advise you?

A He said that he had spoken to Mr. Valder at that time who was terminal superintendent at Penn Station and he expressed interest and would contact me upon my return to work.

Q Did he contact you?

A He did.

Q Did you go see him?

A I did go to see him.

Q What transpired?

A Well, he invited me up to his office on Seventh Avenue along with some of the other personnel,

the stationmaster, Mr. Milroy, Mr. Zwonick, who was assistant to the terminal superintendent and Mr. Roger Milroy who was his assistant. They asked me some questions in regards to the stationmaster's job and he wanted to find out why did I go to the trouble of writing all of these various people. My answer was that I wanted everyone to know my desire. He told me after a short conversation that I was accepted, but I would have to post for the job on my days off and I asked him what should I do besides posting or what could I read up on and so forth and he said just read everything. From that point on I began posting on my days off.

Q Did he tell you whether or not you would have to take any kind of examination at that time?

A Yes, he did tell me after I posted for a while, I should tell him that I felt ready and he would set up a date for an examination.

Q Had Mr. Valder or anyone else set up a posting schedule for you?

A No, they did not.

Q Could you describe what you did in posting on your own time?

A On my days off I would come in and observe the operation in the stationmaster's office. I would also --

or not any other applicant for the position of assistant stationmaster has ever been required to go out and post on his own time without any kind of a posting schedule?

A Not to my knowledge.

Q At the time you applied for your job in August of 1967, had any other applicant for position of assistant stationmaster ever been told he had to take an examination to qualify?

A One person, the first black, Mr. A. E. Johnson.

Q How long did you post on your own time, Mr. Harris?

A I did.

Q How long did you do that?

A Before the examination, approximately six weeks.

Q You then took an examination?

A Then I took an examination.

Q Where was this examination administered?

A In the office of Mr. J. C. Valder.

Q Was the examination oral or was it in writing?

A It was oral.

Q Who was in the office during the administration of this oral exam?

A I would like to correct something. The first exam was in the same office. I must say Mr. J. C. Valder's

former office because he had been elevated to another position, trainmaster at Jamaica and was replaced by Mr. J. W. Wainwright at that time.

Q And that is where the examination was held?

A This is where the examination was held.

Q Do you recall who was present during this examination?

A Mr. John Wainwright, Roger Milroy and Mr. Charlie Zwonick.

Q Who administered the examination?

A Mr. Roger Milroy.

Q How long was the examination, Mr. Harris, do you recall?

A Three hours long.

Q What kind of questions were you asked?

A Questions on train, train numbers, eastbound trains, westbound trains, physical characteristics of the station. Questions on yards, tracks, platforms, number of platforms, where various things in the station were located, the duties of the stationmaster.

Q What were the results of that examination?

A I failed.

Q Who advised you you failed?

A Mr. Roger Milroy.

Q Did he advise you at that time or at a later time?

A At a later time.

Q Did he advise you why you failed?

A He said I was a little weak on the special operation section of the timetable.

Q Was anything else said by Mr. Milroy to you at that time?

A He advised me to keep posting. They still had me in mind, to keep posting, and when I felt I was ready again to let him know and they will set up another examination.

Q Were you to post on your own time, Mr. Harris, or were you to post on the railroad's time?

A I continued to post on my own time.

Q Was there a posting schedule set up for you?

A No, there was not.

Q Did you continue to post?

A I continued to post.

Q Do you recall approximately how long you posted the second time?

A The second time I posted from that point up to sometime in December.

Q During this time, did you work at Penn Station?

A Shortly after this, I was bumped off my job by

a senior usher, a senior who had more seniority than myself, and I went to the Jamaica station and shortly, or about shortly after I went to the Jamaica station, I went on vacation and after I returned, I was told by one of the ushers at Jamaica that the railroad had established a program of posting for Mr. Robert Partridge and that he was posting in that program and was placed on the job afterwards.

Q Did you have any conversations with anyone in management with regard to Mr. Partridge?

A Yes. After I came back, shortly after I came back, I bidded the job back into Penn Station and after I arrived there Mr. Milroy approached me and told me that he was sorry, that they had filled the position of assistant stationmaster and they had no need for anyone else at that time but they would still keep me in mind and thanking me very much.

2-2 Q What is Mr. Partridge's race?

A He is white.

Q Had he been required to post on his own time?

A No, he was not.

Q Had Mr. Partridge been required to take an examination prior to becoming an assistant stationmaster?

A No.

Q After Mr. Partridge was appointed to the position, what if anything did you do?

A Then I went back to the Human Rights Commission. Out of that hearing the railroad --

Q Were you represented by an attorney at this hearing?

A No, I was not.

Q What was the result of it?

A The railroad was told, or rather the railroad promised at the suggestion of the commissioner that they would set up a similar type of program for me that they had set up for Mr. Partridge.

Q Do you recall when this occurred? Can you place it in time?

A Very near Christmas in December of 1967.

Q Did the railroad then set up a program?

A They promised that they would at the beginning of the year, which they did.

Q Could you describe the program that was set up for you, how long it lasted, what you did during the program?

A They did set up a program for me. I posted for four days. At the end of the week Mr. John Wainwright told me that I would take the exam the following Monday.

A This was done at the Jamaica station.

Q Had the others been done at Jamaica or Penn Station?

A The others were done at Penn Station.

Q Was this an oral examination or written examination?

A This was an oral and a written examination.

Q Do you know of anyone else who took an examination that day?

A I was told that Mr. Robert Partridge took it on the same day.

Q And Mr. Robert Partridge had been working prior to that as an assistant stationmaster?

A He had been working about eight months prior to this.

Q Could you describe what the examination was like, how long it was, who it was administered by?

A The examination was about three and a half hours long and dealt with the movement of trains and rules and regulations that govern train movements from Penn Station to Jamaica and from Brooklyn to Jamaica and back, our signals in the tunnel, phones and phone placement throughout the tunnel and locations. Yards at Jamaica, the various yards at Jamaica, the number

of tracks in the various yards, their purposes. A conglomeration of things that have nothing to do with being a stationmaster.

Q Who administered the examination?

A Mr. John Greer.

Q What was the result of your examination?

A I failed the examination.

Q Do you know how Mr. Partridge fared on the examination?

A Mr. Partridge also failed.

Q Were you then permitted to work as an assistant stationmaster?

A No, I was not.

Q Do you know if Mr. Partridge after failing this examination was permitted to work as an assistant stationmaster?

A He had already been working as an assistant stationmaster and he returned to his usual job.

Q Did there come a time, Mr. Harris, after May 6, 1968 when you took another examination to qualify as an assistant stationmaster?

A After I went back to the Human Rights Commission again. The hearing was October 16, 1968.

Q Were you represented by an attorney at that time?

1 A No, I was not. And at that hearing the Long
2 Island Railroad was given until the 16th of November
3 to set up the examination.
4 Q Did you take an examination?
5 A I did at that time.
6 Q When?
7 A The 16th of November.
8 Q Did anyone else take that examination?
9 A No.
10 Q Do you know whether or not Mr. Partridge took
11 another examination?
12 A No, I do not. I know he did not take it on that
13 day.
14 Q What was the result of that examination?
15 A I passed.
16 Q Where was this exam administered?
17 A In what was called the book of rules examiner's
18 office.
19 Q Is that in Jamaica or Penn Station?
20 A At Jamaica.
21 Q Who administered it?
22 A John Greer.
23 Q What were the results of the examination?
24 A I passed.
25

1 Q Who advised you that you passed the exam?

2 A Mr. Roger Milroy.

3 MR. HOLWELL: Would you mark this.

4 (Plaintiffs' Exhibit 4 received in evidence.)

5 Q Is that the letter you received from Mr. Wainwright, Mr. Harris?

6 A From Mr. Roger Milroy, yes.

7 Q After passing this examination, Mr. Harris, were you then qualified to work as an assistant stationmaster?

8 A Yes, I was.

9 Q Were you put on the extra list?

10 A I was placed on the extra list.

11 Q When was this? When were you placed on the extra list?

12 A As of the time I received that letter.

13 Q I would like to direct your attention, Mr. Harris, to a period of time when you were working as an extra assistant stationmaster between July of 1969 through March of 1970. Did you work as an extra assistant stationmaster during this period of time?

14 A Yes, I did.

15 Q Do you recall what your rate of pay was?

16 A The daily rate of pay was $38.59.

Q Do you know whether or not there were other ushers who were working as extra assistant stationmasters during this period of time?

A Yes.

Q What was their rate of pay, if you know?

A $42.

Q How did you discover they were receiving $42 and you were receiving $38?

A By discussing the matter with them.

Q After you discovered this discrepancy, what if anything did you do?

A I called Mr. Roger Milroy and spoke to him about it. He promised me he would take care of it.

Q Did you hear anything further from management after your complaint?

A The next thing I heard Mr. Charlie Zwonick approached me and told me I was getting the correct day's pay.

Q Was that the end of the matter?

A No. Shortly thereafter I found out that in an effort to cover themselves, management had reduced the other extra assistant stationmasters' rate of pay to what I was getting.

MR. STOKES: I ask that the witness be

1 directed to stop making remarks such as "in an effort
2 to cover themselves."
3 MR. HOLWELL: Your Honor --
4 THE COURT: Let's not have any argument. This
5 is nonjury and I can understand the objection.
6 Conclusions are not legally admissible and I can certainly
7 make that determination.
8 Q Did the railroad pay you the differential
9 for the months in 1969 and 1970 during which you had been
10 paid the low rate?
11 A No, they did not.
12 Q Did you ever get paid for that differential?
13 A I did finally. I went back to the Human Rights
14 Commission again in 1972.
15 Q How were you advised you were going to get paid
16 this differential in 1972? Did you receive a letter?
17 A I received a letter from Mr. Larry Dixon.
18
end tk 2am 19
20
21
22
23
24
25

MR. HOLWELL: I would like to have this marked for identification.

THE COURT: Is there any objection?

MR. STOKES: No objection.

THE COURT: There being no objection it may be received.

(Plaintiff's Exhibit 5 received in evidence.)

Q Mr. Harris, I show you Plaintiff's Exhibit 5 in evidence. Do you recognize that letter?

A Yes, I do.

Q Is that the letter advising you that you would be paid the differential?

A That's correct.

Q Who is it from?

THE COURT: It speaks for itself. Really, counselor. I have seen it, it's in evidence, I know.

A It's from J.C. Valder.

Q Once you get on the extra assistant stationmaster's list, Mr. Harris, how do you go about becoming a permanent assistant stationmaster?

A When a vacancy occurs.

Q Between the time you applied for the job originally in August of 1967 and the time you were appointed permanent assistant stationmaster in November of 1972,

2 were there any vacancies that were filled in the ranks of
3 permanent assistant stationmasters?
4 A To my knowledge, three.
5 Q Who were those three?
6 A Mr. John Gallagher, Walter Kempsky and Mr. Bob
7 Partridge.
8 Q When did Mr. Gallagher become a permanent assist-
9 ant stationmaster during that period of time, Mr. Harris?
10 A During this period of time, 1969.
11 Q Where is he assigned as a permanent ASM?
12 A At Penn Station.
13 Q What was his position immediately before getting
14 this job as a permanent ASM at Penn Station?
15 A He was an usher.
16 Q Had Mr. Gallagher ever worked at Penn Station
17 as an assistant stationmaster before?
18 A No.
19 Q Had Mr. Gallagher ever been required to post
20 on his own time and pass examinations with regard to all
21 three stations before being allowed to work at Penn
22 Station?
23 A No.
24 Q When you were assigned in November of 1972 as
25 a permanent ASM how did the vacancy that you filled open

1 up?

2 A Mr. Ginsinger, the stationmaster, retired and I

3 filled his vacancy.

4 Q Do you recall when Mr. Ginsinger retired?

5 A He retired officially January or February 16th

6 of the same year.

7 Q Is that when he left the job?

8 A He left the job before then because he had

9 vacation time, five weeks, and I covered it from that time

10 until I was appointed.

11 Q You worked permanently as an assistant station-

12 master in Mr. Ginsinger's job from March until November?

13 A Right, and even before.

14 THE COURT: From January, didn't you say that?

15 THE WITNESS: Yes, I said January or February

16 16th, I am not quite certain of which, but it was one of

17 those months, but Mr. Ginsinger actually left his job

18 five weeks prior to that time which was his vacation time

19 and it was then that I was placed on his job.

20 MR. STOKES: What year was this?

21 THE COURT: Late '71 or early '72.

22 THE WITNESS: Correct.

23 Q During this time when you were working full time

24 as an assistant stationmaster were you working as an extra

25

1 or were you permanently assigned to that position?

2 A I was working as an extra.

3 Q Was the rate of pay that you received as an

4 extra different from the rate of pay that you would have

5 received as a permanent ASM?

6 A The rate of pay was different.

7 Q Do you know of any other instance in which an

8 extra ASM has been required to hold down such a position

9 for such a length of time before being appointed to it

10 permanently?

11 A No, I don't.

12 Q Mr. Harris, are you familiar with a book entitled

13 The Book of Rules published by the Long Island Railroad?

14 A Yes, I am.

15 MR. HOLWELL: This has not been marked yet for

16 identification.

17 (Plaintiff's Exhibit 6A received in evidence.)

XXX 18

19 Q Is this a copy of The Book of Rules, Mr. Harris?

20 A That's correct.

21 Q Are there any rules which state when an employee

22 must carry a Book of Rules?

23 A Yes. While he is on duty.

24 Q Why is he required to keep this Book of Rules?

25 A So that he will have it as a means of reference.

Q Can you tell me, Mr. Harris, what subjects are covered by The Book of Rules? What areas does it treat?

A The various operational areas of the Railroad. There are portions of it that deal with the tower's operation, trainmen's and conductors' operation and areas that deal with just simply managerial operations.

Q But the entire book does not refer to just one job, it refers to a variety of jobs?

A Right.

Q Are there any portions of it that refer to your job as an assistant stationmaster?

A Yes, there is.

Q What rules would those be? You don't have to look at the book, but just offhand.

A Mostly rules that deal with the sta .on or the way crewmen handle themselves in the station or their dress uniform, whether they should participate in any use of alcohol or narcotics or things of that type, you know, and nature.

Q Mr. Harris, during the time you have been a qualified assistant stationmaster have you ever been required to attend a class on The Book of Rules, a Book of Rules class?

A Yes.

Q Could you tell us if you recall the first such class you attended after you became a qualified assistant stationmaster in November of 1968?

A It was sometime at the beginning of '69, the spring of '69.

Q Who conducted that class?

A Mr. John Greer.

Q Where does he conduct his classes or where did he conduct that class?

A At Jamaica station.

Q Who was Mr. John Greer?

Q He is what is referred to as The Book of Rules examiner.

Q Did you attend this class by yourself, Mr. Harris, or were there other employees there?

A No, there were approximately 15 or 20 persons.

Q Were they all assistant stationmasters like yourself?

A No, they were not. I was the only assistant stationmaster in the room. The others were trainmen, conductors.

Q How long did that particular class last?

A From nine to twelve.

Q Could you describe in your own words how that

class was conducted?

A Very informally. Mr. Greer would choose a person at random, ask him a question. If he couldn't answer it he passed it on to another individual and it went around the room until someone answered it or if no one answered it he would use the question as a means of instructing the class on that particular rule.

Q Were you asked any questions during this period?

A As I recall only two or three. One I recall vividly. It was on the meaning of a blue tag on a piece of equipment.

Q Were trainmen asked questions about performance of the job of assistant stationmaster, administrative aspects of running the station?

A Not at all.

Q Were you asked any questions about conductors' duties out on the track?

A No, not at that point.

Q During the class, Mr. Harris, did Mr. Greer at any time ever indicate or intimate that the members of the class were being tested?

A No, not at all.

Q Were any tests given?

A There were no tests given.

Q Were any grades handed out at the end of the class?

A No grading at all.

Q Were people told at the end of the class whether they had passed or whether they had not passed?

A Not at all.

Q Was there any mention of grades or marks or passing or failing?

A No. This was not mentioned.

Q After this first Book of Rules class in 1969 did there come a time when you attended another Book of Rules class?

A Yes, there was.

Q Do you remember approximately when that was?

A Approximately 17.

Q Where was this class held, Mr. Harris?

A In the same office.

Q Who conducted it?

A Mr. Greer.

Q How was present at this class? Were you by yourself or were others in attendance?

A No. At this one we had I believe three assistant stationmasters and one stationmaster.

Q How long did the class last?

Q What did Mr. Rizzacozza advise you with regard to your request?

A I explained the same thing to him and asked him to reschedule the exam. He said it has already been set up and that's it. Just be there.

Q Was he aware of what your shift is, Mr. Harris?

A Yes, he is quite aware of it.

Q On the morning of August 1, 1974, which is the date you were directed to report to the Book of Rules examination, what did you do upon completing your job?

A I took the train to Jamaica.

Q What train would that be?

A That would be the 7:10.

Q When did you get in, then, to Jamaica station?

A I arrived at the Jamaica station approximately 20 minutes afterwards.

Q What did you do after you arrived?

A After I arrived there I went downstairs to the coffee shop and got a piece of Danish and a cup of coffee and went into my car with the intention of relaxing there until it was time for the examination, which was 9:00. I had the coffee and Danish and afterwards I dropped to sleep.

Q When did you wake up?

A When I awoke it was about 11:00, 11:30, something like that.

Q What did you do then?

A Realizing it was too late to do anything about the Book of Rules, then, I decided that I would just go home and when I came in that night I would a letter written to leave on Mr. Rizzacozza's desk explaining the situation the following morning when he came in.

Q Did you go in to work that night, Mr. Harris?

A I did go in to work that night.

Q What happened when you arrived there?

A When I arrived there Mr. Robert Partridge, the stationmaster, was waiting and he told me that he had orders from Mr. Lou Rizzacozza to take me out of service.

Q Did you ask him why?

A Yes, I did. He said he did not know why. He just had orders to take me out of service. I then asked him for how long. He said, "I don't know that either. I just have orders to take you out of service."

He said, "Jamaica will contact you." So I thanked him and while he didn't know how long I was going to be out of service he knew to tell the relief assistant stationmaster--the extra assistant stationmaster who had traveled to Penn Station along with me on the same train

A Excuse me?

Q Were you scheduled to work the night before this was supposed to take place?

A Yes, I did work the night before the exam.

Q Was Mr. Rizzacozza aware of your weekly schedule?

A He was aware, yes.

Q On the morning of the 21st, the day of the examination, after you finished your job what did you do?

A I took the usual train to Jamaica and after I got there, realizing what had happened before I just walked around the neighborhood until it was time for the examination.

Q How long did you do that?

A Well, until about five minutes to nine. From about 7:20 until about five minutes to nine.

Q Did you then report to the class at 9:00?

A I beg your pardon?

Q Did you then report to your class at 9:00?

A At about five minutes to nine.

Q Was anyone else in attendance at this class?

A No, I was the only one.

Q Did Mr. Greer conduct the class?

A No. At this time it was a Mr. Peters. I believe it's Nelson Peters.

Q Do you know what his position is with the Railroad?

A I am sorry.

Q Do you know what his position was with the Railroad?

A I think he is Mr. Greer's assistant.

Q Can you describe to me in your own words, Mr. Harris, how the class began and how it continued, what he said to you and what you said to him?

A Well, I walked in and said, "Good morning." Mr. Peters grunted and said nothing. I asked, "Is this the Book of Rules class?" He said, "Yes, it is," and he asked me my name and I gave him my name.

He told me to have a seat and I could see right away, I was told not to say certain things, but again I can only describe what I saw. The atmosphere was hostile.

Q Perhaps you can just describe what happened after that. Did he begin discussing the Book of Rules with you?

A Yes. Mr. Peters then placed a miniature signal apparatus on the table and began to ask me various signal indications. In other words, he would flick a signal and ask me what does this mean, what does that mean and he proceeded along that line. Whether I was right or wrong

I didn't know, he just kept flicking, what does this mean, what does that mean.

Q He didn't advise you whether or not an answer was right or wrong?

A No, he did not.

Q I assume that he didn't explain to you any errors you had in your answers?

A What?

Q He didn't explain to you any mistakes you may have made?

A No, he did not.

Q Do you have any idea how many you answered right or how many you answered wrong?

A No, I don't. After about 15 minutes of this Mr. Peters got up and left the room for a little while. He came back and then he handed me a folder with questions and answers in it.

He said, "Look that over quickly and answer the questions."

Q Did you in fact answer the questions, Mr. Harris?

A I then proceeded to do just that. I looked it over and proceeded to answer the questions to the best of my ability.

Q How long did you spend on the exam, Mr. Harris?

Q What did you do, Mr. Harris, after you finished the examination?

A After the examination, Mr. Peters looked it over and in a couple of minutes decided that I failed.

Q What did he say?

A He said, "This won't do. You didn't make 75 percent." Then he got up and I assume he called Mr. Steel.

Q Why do you say that?

A Because shortly thereafter he told me we will have to go upstairs and see Mr. Steel.

Q Did you in fact go up to see Mr. Steel?

A We did go up to see Mr. Steel.

Q Did both of you then go in to see him?

A No, he went in to see Mr. Steel first. He told me to sit down in the lobby and wait for a while. They were in there for a while and finally he came out and told me to come in. By that time I was sleeping. I just don't know how long he was in there.

Q When you went in to Mr. Steel, what did Mr. Steel say to you?

A He said, "Harris, you didn't make 75 percent. We can't have this. You have to make 75 percent in order to pass," and I said, "Pass what?" He said, "You didn't

1 pass your book of rules examination. You have to make
2 75 percent on that in order to remain on your job.
3 Since you didn't pass, I will have to call Mr. Danny
4 Mazzenotti." He said, "I will have to send you over to
5 see Mr. Danny Mazzenotti and have yourself set up to go
6 back working as an usher."
7 Q In other words, he removed you from serving
8 as an assistant stationmaster?
9 A That is correct.
10 Q Mr. Harris, prior to August 1, 1974, had any
11 other stationmaster or assistant stationmaster or
12 extra assistant stationmaster or other member of
13 management ever been required to take an exam on a book
14 of rules?
15 A No, not to my knowledge.
16 Q Since August 21, 1974, had any stationmaster,
17 assistant stationmaster or extra assistant stationmaster,
18 other member of management ever been advised if he didn't
19 do well in a book of rules class, he would be given an
20 examination?
21 A Since then?
22 Q Prior to that.
23 A No one. As a matter of fact, when it was even
24 mentioned to anyone, they felt it was the strangest thing
25

1 anybody ever heard of.

2 Q Let me go back a second, Mr. Harris, to the

3 initial part of your book of rules class with Mr. Peters

4 when he was showing you signals on a signal machine.

5 In your job as an assistant stationmaster, Mr. Harris,

6 is it your function to read track signals on a regular

7 basis?

8 A No, it is not.

9 Q Do you walk down on the tracks? Is your office

10 down on the tracks?

11 A No, it is not.

12 Q In the course of your work, do you ever get

13 down on the tracks?

14 A Yes, I do, once in a while.

15 Q When you are down there, do you occasionally

16 look at a signal here or there?

17 A Occasionally, but it isn't necessary.

18 Q The signals that Mr. Peters was flashing at you

19 on that morning, which employees would generally have

20 to know what the signals meant?

21 A Men that operate on the tracks, conductors,

22 trainmen, engineers, etc.

23 Q How do they learn to read the signals?

24 A By going to school during their initial

25

inception into the company. They go through a training period and they go through periodic training periods for this, a real school.

Q Were you given any kind of training like this to get prepared for your job?

A Not at all.

Q These conductors and engineers, they work on a day-to-day basis with these signals?

A Yes.

Q These are the signals out on a track when driving a train you would see them?

A Right.

THE COURT: Is this a good time to stop for lunch?

MR. HOLWELL: It is fine with us.

THE COURT: Be back at 2:00.

(Luncheon recess)

2 with regard to those trains?

3 A There did come a time.

4 Q What is PWA 648?

5 A That is an equipment train that leaves the

6 station at 6:48 in the morning.

7 Q What track does it usually depart on?

8 A Track 15.

9 Q What is the train 708?

10 A Train 708 leaves normally from track 16.

11 Q What time does that depart?

12 A 6:51.

13 Q Three minutes later?

14 A Yes.

15 Q What is the relationship between the tracks 15

16 and 16?

17 A They sandwich the same platform. You have the

18 same platform between 15 and 16.

19 Q Can you explain to me what the track change

20 involved?

21 A What it involves?

22 Q That is correct.

23 A It involves --

24 Q The track change that was made. What was done?

25 A One track change was made.

decision was actually made to effectuate this proposed change, to switch the PWA 648 and the train 708?

A Yes.

Q When was that?

A At about 6:30, shortly before 6:30 or around 6:30 we received a report from the Harold tower, Long Island City, which stated that the train was running about three minutes late. That is when Mr. Lansperg made the decision to change the equipment.

Q Did he communicate that decision to you?

A He did.

Q After the decision was made by Mr. Lansperg, what if anything did you do?

A We proceeded to make an announcement as to the location of the PWA 648 as well as we asked for brake tests of the --

Q You say "we." Who do you mean?

A Mr. Lansperg and myself. Sometimes we both do the same thing. I asked the usher to make an announcement for the car inspector's benefit as well as Mr. Lansperg. Then I called the car inspector's foreman and informed him of same. I called the yardmaster and explained to him what we were doing. I called the ticket clerk and told him that train number 708 or rather

the 6:50 or 6:51 would leave from track 15 and at the same time I walked to the door and looked at the information booth because it is generally closed at night from 12:01 and opens up generally in practice about a quarter of seven. I looked in the information booth, this was about 6:30 and no one was in there, so it was then that I called the ticket clerk and informed him of the track change.

Q When you spoke to the usher, Mr. Sherrer, did you contact him by phone?

A When I spoke to Mr. Sherrer, he was right there with us and I asked him to make the announcement of the track change and he went in the booth and started making announcements.

Q What was Mr. Lansperg doing at this time?

MR. STOKES: May I hear the witness' last answer?

(The answer was read.)

Q What if anything did Mr. Lansperg do during this period of time? Was he in the office also?

A During this period of time?

Q That is correct.

A He also told the usher to make announcements.

Q Did you hear the usher make any announcements

in regard to this change?

A Yes, I did hear him make announcements.

Q Do you know whether he made the entire announcement correctly or not?

A No, I can't say that I heard everything he said and that he made or said everything that was supposed to be said. I can't say I heard this because immediately we were concerned with the PWA 648 and I got on the radio at one time and asked them did they in fact receive their brake test. They said no. We asked the usher to repeat the announcement. Brake test is wanted on track 16. Shortly thereafter, the train crew informed us that they had their brake test and was consequently ready to go.

Q Is it your practice to sit and listen every time an usher makes an announcement to make sure he is making it correctly?

A I don't listen to everything he says. This man has been on the railroad for twenty-six years. He had at one time been an assistant stationmaster, an extra one himself. I don't think it is necessary for me to listen to every word he says over the loudspeaker.

Q Do you know whether or not it is Lansperg's practice when he is on the job that he can sit and listen to make sure that every announcement that an usher makes,

what we were working on at that particular time.

Q When Mr. Rizzacozza came in, will you tell me as best you can recollect what he said to you and what you said to him.

A Mr. Rizzacozza walked in and started screaming, "Harris, why haven't you announced those track changes, people are down there running around not knowing where to go. Why haven't you made those track changes?" Realizing that we hadn't made any track changes, I asked what track changes. "You know exactly what track changes I am referring to. Get that usher started on making the track changes."

Realizing that he was at such a pitch and no response I could give him would calm him down and that was the only way we could affect any reasonability, I just suggested to him, "Lou, Mr. Lansperg is in charge here."

"Don't tell me who is in charge. I know who is in charge here. It is your responsibility to see that that man made the correct track changes," and he proceeded to rant and rave and he ended with, "You are out of service."

With that, I gathered my pencils and pens and belongings. He sat down in my seat and jumped right back

A Not at any time.

Q During the entire exchange, Mr. Harris, did you raise your voice at all to Mr. Rizzacozza?

A Not at any time during that morning.

Q Mr. Rizzacozza ever raise his voice to you?

A He came in yelling. He yelled until it was all over.

Q After you left the office, Mr. Harris, what did you do?

A I tried to find out just what it was all about myself because I didn't know what it was all about. He spoke of track changes and so forth and people were running around not knowing where to go, so I walked out the front door, through the waiting room on the concourse to track 16 and as I walked over there I did see that in fact the 6:51 train was advertised on track 16 and the 7:01 train was advertised on 15.

As I walked up Joe was standing there and I looked at him and I said, Joe, you know, sort of what the devil is going on. So he looked at me and said, "I am sorry, Ed," and that's all that was said between Joe and myself. He proceeded to change the signs and correct them himself and he went back into the office. As I walked down the stairway I heard him announce a train again.

After I got on the train which was located on track 15, the same platform that the train would ordinarily leave from, only on the other side--this is a train that I caught once a week which Mr. Walt Kempsky comes in on. He comes in ordinarily on that same 6:11, which is scheduled to arrive in the station at 6:38, so you can see that I have time to catch it.

So when he gets in on that particular train I would put my belongings together and take that same 6:51 out of the station. The same people and the same places, the same seats. Some of the people had already gone to sleep. Nothing was out of order. I looked up and down the platform for this turmoil that Mr. Rizzacozza referred to and nothing was out of order.

Incidentally, track changes are made during the middle of the commission hours frequently. Sometimes the train might be changed twice. Passengers would leave one platform and dash to another platform and after they get over there we find the equipment we have over there is inoperative, so we have to move them to another platform and this would happen in the middle of the rush hour or the commission hour. Nothing is done about it, you just try to correct it and do the best you can.

Q Do you have any idea how Mr. Shearer made the

Q Did there come a time, Mr. Shearer, when there was a track change with regard to the PW648 and train 7:08, which is the 6:51 to Hempstead?

A Yes, there was.

Q What track does that PW648 usually leave from?

A That I don't know. That train normally runs I think at one time off 20 or 21 track, but usually I don't have anything to do with it. It is with Mr. Harris, Mr. Lansperg and the yardmaster. They take care of the equipment moves.

Once in a while they have me make an announcement if there is a track change on the equipment, then I will make the announcement.

Q But you just know there was a change involving those tracks?

A On that particular day, yes.

Q When was the first time during the course of the evening that you heard that there might be a change involving these trains?

A Well, that was quite early in the evening. They were discussing it, the stationmaster and the trainmaster. They were discussing--there was a note left, I believe, on they may have to use one of the trains to make this PW648 if another train was late and this was quite early

in the evening they were discussing this.

Q Did there come a time when you were told that there was to be a change and there was supposed to be an announcement made with regard to a track change?

A Yes, I was.

Q When did that occur?

A That was between 6:25 and approximately 6:30, during that time.

Q Who contacted you?

A At the time, Mr. Harris.

Q Where were you? Did he call you by phone?

A No, I was in my booth.

Q In the office?

A Well, yes. Into a partition next to his office is my place where they have a microphone.

Q Do you recall what he said to you?

A Yes. He told me to make an announcement that the PW648 I believe it is and also that there was going to be a track change on the other train, the 6:51.

Q Do you remember what that track change was?

A The 6:51 was supposed to leave off of 15 and the PW648, I believe it was, was supposedly off of 16.

Q After you got this direction, Mr. Shearer, what did you do, if anything?

A I called out PW648. I made announcements on that, I notified the crews that the train was going to leave off 16 track. I in turn went outside and took down the 7:01 train, which was on 18, and put that on 15 track which was a mistake that I had made.

I had misunderstood Mr. Harris when he had turned around and told me that the 6:50 was--he was giving me a train number and when he gave me the train number, I thought it was 7:08. Not thinking, I thought it was the 7:01, the Long Beach train on track 18.

As I said, I normally don't make these type mistakes, but I did that morning and I had put the 7:01 on 15, leaving the 6:50 sign still on 16 track and then I called out the track change and then I loaded the 6:43 Port Washington train which was on track 19.

Q After you loaded that 6:43 train on track 19, what did you do?

A 6:43?

Q After you finished loading that.

A I loaded that train and I walked into the office and this is when the trainmaster came.

(Continued on page 104.)

heard said at that time, what each person said?

A The trainmaster walked in and said, "Mr. Harris, do you know you have a track change downstairs?" Mr. Harris said yes. He said, "When are you going to have the usher make the announcement," and I walked in to my booth figuring I was waiting for the order to make the announcement and I come back outside again and then the trainmaster said to him, to Mr. Harris, "Don't you know that is part of your job as well as running this railroad, that usher inside there is part of your job? Are you going to have that announcement made?" At that time it was getting a little hot and heavy, so I started to walk back into my office to make this announcement and I heard Mr. Rizzacozza turn around and say to Mr. Harris, "You are out of service." This is where I got involved. He turned around and said to me, "Make the announcement of the track change." I turned around and said, "Attention please. 7:01 is on track number 14." He said to me, "Wait a minute, don't you know what you are doing?" I said, "Yes, I know what I am doing" --

MR. STOKES: When you say "he"?

THE WITNESS: Mr. Rizzacozza.

A I said, "Yes, I know what I am doing." He said, "The 7:01 ain't on 15," and at this time I realized the

1 mistake I had made. I had turned around to take the train
2 off 18 and put it on 15 which I should have never done.
3 After realizing this mistake, I rushed out of the
4 office, I went over to the track to pull the signs down,
5 to correct myself right away so nobody would get
6 involved or people missing trains. As I was there I met
7 Mr. Harris. At this time he was taken out of the service
8 and walking downstairs and he said to me, "What are you
9 doing with the 7:01 train on 15 track, it doesn't
10 belong there." I said, "No, I made a mistake and I will
11 go back and speak with the trainmaster about this
12 because you got in trouble over a mistake I made."
13 I in turn -- I made my corrections. I went back inside,
14 made my announcements right away, I corrected this so
15 nobody would get misled and when I got everything
16 straightened out, got the sign back on 18 again where it
17 belongs, I went to Mr. Rizzacozza and said to him,
18 "It was my fault. I put the wrong signs up causing this
19 man to get blamed for it." I said, "Don't blame him,
20 it was me that done it." He said to me, "All right."
21 I walked out, I continued to work until my
22 time was up. My time was up at 7:00. 7:00 I went back
23 still feeling guilty over this because it meant the
24 man's job. I turned around and said to him -- at that
25

time Mr. Lansperg was sitting, as at both times. I said to him, "Don't blame Mr. Harris because it was a mistake I made and I don't know why I have made it, I have never made these mistakes before. I made this mistake and I am sorry for it.

I went home that evening figuring they were going to reinstate Mr. Harris.

Q During the time you were in the office when the exchange between Mr. Harris and Mr. Rizzacozza was taking place, did you hear everything that was said back and forth?

A No, I did not.

Q Why was that?

A Because I was in my office some of the time and most of the time as I said before, when there is a dispute with two officials in the company, I try not to get involved in any way.

THE COURT: You learned that early, didn't you?

THE WITNESS: Yes.

Q At any time you were in the office, did you hear Mr. Harris raise his voice at Mr. Rizzacozza?

A I did not.

Q Did you at any time hear Mr. Harris refuse to undertake any order that had been given him?

Q Do you have any recollection of having made other announcements during this period?

A No.

Q So when Mr. Rizzacozza arrived prior to 6:46 in the stationmaster's office, he was correct when he said that -- or when he asked, why have no station announcements been made for the track change because in fact no announcements had been made, is that correct?

A The change itself?

Q Right.

A That is correct, I did not make a change announcement but there was a reason for that, if you want me to explain.

Q I didn't ask for the reason.

Mr. Rizzacozza when he came in asking why no announcements of the track change had been made, that was correct, that no announcements had been made.

A Yes.

Q Did I understand correctly that night when line 3 was out of service, you said it was back into service at approximately 12:30?

A No, it went out.

Q How long was it out of service?

A They take it out so many times on us, at that date

the letter of reprimand from Mr. Gaynor to Mr. Harris in connection with this incident. That is in plaintiff's possession. I ask that it be produced.

MR. HOLWELL: We are giving Mr. Stokes a copy of a document that he produced to us pursuant to a notice of deposition of Mr. Gaynor.

THE COURT: Is there any objection to having it marked?

MR. HOLWELL: For identification, no.

MR. STOKES: I wish to mark it at this time.

MR. HOLWELL: We object as not being pertinent to the issues before the Court, that is the dismissal of Mr. Harris for the act of insubordination.

THE COURT: I think you have a very narrow view of this situation. If you are just going to offer the one incident, that is not the issue here.

MR. HOLWELL: That is what they advised Mr. Harris was the issue.

THE COURT: I assume, I expect Mr. Stokes is offering it for the accumulation of factors culminating in the one final incident and I think it is probative on that.

MR. STOKES: Correct. But Mr. Gaynor in his examination before trial which will be introduced, and Mr.

case this way and I don't permit cases to be tried that way.

Do you have the documents?

MR. HOLWELL: Yes.

THE COURT: Turn them over to Mr. Stokes.

MR. STOKES: For the record, I just note that a file containing two pieces of paper, one dated January 28, 1975 from Mr. Gaynor to Mr. Harris and the other dated October 2, 1974 from Mr. Gaynor to Mr. Harris and I would ask that these be marked in evidence, your Honor.

The first document is October 2, 1974.

XXX (Defendant's Exhibit C received in evidence.)

MR. STOKES: The second document is dated January 28, 1975.

XXX (Defendant's Exhibit D received in evidence.)

BY MR. STOKES:

Q Now, Mr. Harris, in your examination before trial, and I believe just before here on direct, you indicated that every day you were receiving these letters, letters of accusation, letters of degradation.

Could you show me in either Exhibit C or D what you consider degrading?

A These are not all the letters, of course, that Mr. Gaynor sent to me.

In these two particular letters you just showed me, I don't see any particular thing that is degrading about them.

Q Nothing degrading about those two letters?

A Not those particular letters.

Q I asked you on your examination before trial whether you had saved any of the so-called degrading letters and you answered affirmatively and that they would be produced here in the courtroom.

Do you have any other letters that you have not produced from Mr. Gaynor?

MR. HOLWELL: We would like to indicate that we have identical copies of letters produced by Mr. Gaynor at the deposition and those are marked.

THE COURT: Let us get them. Let us not waste time on it. If you have other letters--

MR. HOLWELL: Mr. Stokes has them.

THE COURT: Let us produce them. Between you, you must have some letters and let's have them out and not waste a lot of time as to who got them.

MR. STOKES: We put these in but at the examination--

THE COURT: All I want to know is whether you have others in addition to these. Let us get on with it.

MR. STOKES: I show counsel a letter dated October 7, 1974 from Mr. Gaynor to Mr. Harris. I ask that that be marked.

XXX (Defendant's Exhibit E received in evidence.)

MR. STOKES: A letter dated October 11, 1974 from Mr. Partridge to Mr. Gaynor.

MR. HOLWELL: In addition to our other objection as to relevancy we object to this one because neither Mr. Partridge nor Mr. Gaynor is here to identify it as a business record. It is not addressed to Mr. Harris.

MR. STOKES: I would agree that the last one be marked for identification at this time.

THE COURT: All right.

(Defendant's Exhibit F marked for identification.)

XXX

MR. STOKES: A letter dated November 7, 1974.

XXX (Defendant's Exhibit G received in evidence.)

MR. STOKES: A letter dated November 8, 1974.

XXX (Defendant's Exhibit H received in evidence.)

MR. STOKES: A letter dated November 22, 1974. I am skipping the November 15th letter because that has already been marked.

XXX (Defendant's Exhibit I received in evidence.)

MR. STOKES: A letter dated November 20, 1975.

XXX (Defendant's Exhibit J received in evidence.)

MR. STOKES: A letter dated March 26, 1975.

XXX (Defendant's Exhibit K received in evidence.)

MR. HOLWELL: These documents were originally produced by the Railroad pursuant to agreement by which they would produce all documents containing any misbehavior of Mr. Harris from 1970 until September 12, 1975.

XXX (Defendant's Exhibit L received in evidence.)

Q Mr. Harris, in addition to the exhibits already furnished you, I hand you Exhibits E through L in evidence and ask you to go through them and point out what if any degrading materials are in those exhibits.

A In Exhibit L, for instance, Mr. Gaynor refers to train 4871 which was brought to my attention at 11:35 and that I did not make an entry in the book.

If you were to check the logbook, you would find that that entry was made in the logbook and it is my understanding that that book is supposed to be here in the courtroom.

Q The book is here in the courtroom, Mr. Harris, but am I to understand that assuming that you had properly recorded it and for one reason or another Mr. Gaynor missed it and therefore made a mistake in censoring you,

1 you consider that degrading?

2 A Mr. Gaynor did not only write letters. From the

3 time I returned to my job last year--

4 Q I'm not asking about that. I would like my

5 question answered. If you need it repeated I will have

6 the Court Reporter repeat it, but I would like my question

7 answered and not a diversion from it, Mr. Harris.

8 MR. HOLWELL: I don't think that kind of re-

9 mark is necessary.

10 A They all imply and are designed for the purpose

11 of saying that I was not doing my job and to me that is

12 degrading.

13 Q In other words, a letter from your superior to

14 you critical of the performance of your duties, to you

15 is degradation, it is degrading to you?

16 A To that superior, as a result of my taking them

17 to Court, anything I did was blown out of proportion and

18 up for criticism and this has gone on continuously.

19 Q Now, are there any other letters of a degrading

20 nature that you received from Mr. Gaynor other than the

21 ones that have been marked in evidence?

22 A Well, for instance--

23 Q Other than these letters, are there any other

24 letters in your possession from Mr. Gaynor of a degrading

25

Q I show you, Mr. Harris, Defendant's Exhibit M in evidence and ask you whether you received the original of that letter.

A I believe I did. I can't say that I have had it in my possession.

Q You do have a recollection of having received this letter?

A I believe I did.

Q The oral advice from Mr. Steele and receipt of this letter, was that before or after you made your application to the Court last year for intermediate relief?

In other words, for the Court to direct that you be restored? Mr. Steele orally advised you that you would have a right to take a second exam before you ever made application to the Court, didn't he?

A Right.

Q Yesterday, Mr. Harris, you were testifying starting on page 20 of the transcript as to how you first learned about or first applied for consideration as an assistant stationmaster.

As I understand, this would have been in the area of 1968 that you started seeking to become assistant stationmaster, is that correct?

A In 1967.

1 Q In 1967, and you continued this on into 1968,
2 trying to become an assistant stationmaster?
3 A Into 1968, that is right.
4 Q Did there come a time in connection therewith,
5 in your efforts to become an assistant stationmaster,
6 that you filed an application with the New York State
7 Division of Human Rights?
8 A That is correct.
9 Q What was the gist of that complaint?
10 A Basically or in essence the fact that I had been
11 told to prepare for the examination which was established
12 on my own, posted at the station or various locations,
13 without pay while another person was considered other-
14 wise, a program set up for him and he was made assistant
15 stationmaster.
16 THE COURT: Mr. Partridge?
17 THE WITNESS: Yes.
18 Q Upon the receipt of your complaint the Division
19 of Human Rights held an investigation and a conference,
20 did they not?
21 A That is correct.
22 Q Do you know whether or not they issued a written
23 determination?
24 MR. HOLWELL: We would be willing to stipulate
25

1 MR. STOKES: The determination of the hearing.

2 THE COURT: No objection?

3 MR. HOLWELL: No objection.

4 THE COURT: All right, received.

5 (Defendant's Exhibit R received in evidence.)

XXX 6

7 Q As a result of that hearing did the Division of

8 Human Rights issue an order dismissing the complaint?

9 A That is correct.

10 MR. STOKES: That is dated April 28, 1972, your

11 Honor.

12 Q Do you recall whether or not you and your attor-

13 ney took an appeal to the New York State Human Rights

14 Appeal Board from that decision?

15 MR. HOLWELL: We will stipulate to all of the

16 proceedings at Human Rights.

17 THE COURT: All right.

18 MR. STOKES: I will accept it. I don't have a

19 copy of that decision.

20 THE COURT: He did take an appeal and the appeal

21 affirmed the decision.

22 MR. STOKES: Yes.

23 THE COURT: So stipulated?

24 MR. HOLWELL: Yes, your Honor.

25 THE COURT: All right, very well.

Q Mr. Harris, I would like to refer you to Defendant's Exhibit E in evidence, the failure to cancel PPW1258 on October 6, 1974, in which you received a letter or reprimand from Mr. Gaynor.

Did you in fact fail to cancel that train?

A Well, this requires a little explanation.

B2 Q I am not asking about the explanation at this time. I am asking whether in fact you did fail to cancel that train.

A At Penn Station--

MR. STOKES: Your Honor, can the witness be directed to give a yes or no answer?

THE COURT: Yes.

A The train, an equipment train--

MR. STOKES: Your Honor, I haven't asked for a speech.

THE COURT: Mr. Harris, if there is anything to be developed, Mr. Holwell will bring it out on redirect examination. I think we will get along--

A Yes, I was told that I failed to cancel the train.

Q Over and beyond being told did you in fact fail to cancel that train?

A This depends on if whether you call a cancellation

that I sent a train out, an equipment train to a destination and were told to do otherwise.

This train simply went to Harold Tower, turned around and came back to New York.

Q There were prior instructions issued to you that this train was to be cancelled and was not to leave Penn Station, is that correct?

A Prior instructions clipped on a bulletin board on the side of the wall and hung there, which is not the customary procedure.

This was an instruction dealing with work that was to go on once a week, on Saturday, for a number of weeks.

The general procedure is when I come in that particular order is on my desk in front of me and reminded also by 204 and the yardmaster also has an order in regard to the equipment because he is the man in charge of equipment.

On this particular night, none of this was done.

Q Now, this clipboard on the wall in the office, what does that contain?

A Contains special orders.

Q Are you supposed to check that every day?

A From time to time--every day, yes, as soon as we can get to it. But I don't walk in every night and no one else walks in and runs to the clipboard. This was the beginning of the night.

Q Where abouts in the office is this clipboard located?

A On the right-hand side of the office.

Q Right by the door?

A No, right by the window.

Q Approximately how big is this office, how long and how wide?

A It is a small office, about 14 by 14, something like that; approximately.

Q About what time did you normally arrive for your tour of duty?

A At 11:00.

Q Precisely at eleven you reach Penn Station or do you arrive earlier?

A I arrive generally on train 187 which arrives at 10:49.

Q So you got roughly ten minutes before you are actually required to relieve your--

A No, I relieve him immediately.

Q When you arrive there?

A Right.

Q You don't first try and look at the bulletin board and see what is going on?

A If I have time. Sometimes when I walk in a lot of things are happening so I will try to get those things out of the way, these things immediately of importance out of the way and, finally, I will get to the board.

This happens at various times of the night.

Q I refer you to Defendant's Exhibit D in evidence which is a letter from Mr. Gaynor to you dated January 28th and refers to an incident in the stationmaster's office wherein Mr. Kennedy was arrested.

A Right.

Q Mr. Gaynor states in that letter that you failed to make a notation in the logbook.

Is that true, that you did not make such notation in the logbook?

A That is correct.

Q Were you on duty that night?

A I was on duty that night.

Q Were you present in the stationmaster's office when this arrest was effected?

A Yes, I was.

Q Did you consider that an unusual type of

1 incident?

2 A Yes, but now--

3 Q But not the type to be recorded in the station

4 log?

5 A It was reported to the Long Island Railroad

6 trainmaster, Mr. Bob Hess immediately.

7 Q Because you reported it to Mr. Hess, you did

8 not report it in the log, is that right?

9 A No, I didn't report it in the log.

10 You see, I don't consider the Long Island Rail-

11 road, Penn Station or Mr. Gaynor's railroad or my railroad.

12 It is the Long Island Railroad. I had a trainmaster at

13 Jamaica. I called him directly and reported this inci-

14 dent to him immediately after it occurred.

15 Q In other words--

16 A I felt that was sufficient.

17 Q Mr. Gaynor when he comes in in the morning at

18 nine or 10:00, whatever the hour may be, would have no

19 interest as to whether or not a passenger had been

20 arrested during the night at Penn Station of which he

21 is the terminal superintendent?

22 A I doubt it. Mr. Gaynor knows how many passengers

23 are arrested in Penn Station.

24 Many passengers are arrested that I am not even

25

aware of. There are times when the high eschalon of the Police Department decides they are just going to clean up the station and just load up all the derelicts in the station into a room and hustle them off to the police precinct. No one informs me of all of the arrests.

Q When an arrest takes place in your presence in the stationmaster's office this is unusual, something that the terminal superintendent doesn't necessarily need to know anything about when he first comes in in the morning?

A I'm not saying that.

Q How is he going to learn about it if it is not in the station log?

A It is in the log right outside of his door, the Police Department log is set up for this reason. It stays there, he looks through the Police Department log. It is right outside of his door.

Q Does he say he studied the Police Department log or a PD7 report from the Police Department?

A A PD7 report from the Police Department. It stays right in front of his office door.

Q How long does it lay there?

A All night long. It remains there.

Q The Police Department doesn't send those reports in to their headquarters at Jamaica?

A After a reasonable time.

Q Are you sure those reports are still there when the stationmaster comes in at 10:00 in the morning?

A Mr. Gaynor is saying in reviewing the PD7 report from the Police Department of January 25, 1975.

Q That is the date of the report, right?

A That is right.

Q What is the date of Mr. Gaynor's letter?

A January 28th.

Q Do you know whether he saw that report on January 27th or January 28th, three days later?

A I don't know when he saw it but I know that report is available for him.

Q Does the Police Department send the arrest report that they make out for arrests made at Penn Station during the night to their headquarters at Morris Park prior to Mr. Gaynor's arrival and it is only three days later that he receives a copy of the PD7 report, he has no way other than the stationmaster's log of finding out what happened, has he?

A But it is not done that way. Any incident that is unusual to the extent that it involves crewmen, the arrest of crewmen or an attack of a crewman through a passenger or et cetera, that is immediately conveyed to

204 and the trainmaster at Jamaica.

So this has been duplicated numerous times. I told Mr. Hess and 204.

(Continued on page 171.)

Q So if Mr. Gaynor doesn't find anything unusual listed in the station master's log, then, of course, in the proper performance of his duty he should call 204 to find out if you reported some unusual incidents to them during the night.

MR. HOLWELL: Your Honor, Mr. Gaynor would be the best individual to testify to what his duties are.

MR. STOKES: I am asking this witness for his conception of the proper duties of Mr. Gaynor.

THE COURT: Yes.

A Well, during the run of the night, I have to make a judgment. I have to see that train are departed to the best of my ability according to schedule, clock trains in and out, register them at various hours, coming in, supervise car inspectors, maintain order in the station and a great number of things that are of immediate importance.

I would like to be able to duplicate everyone's reports, but there just isn't enough time to duplicate everyone's reports.

When I told Mr. Hess about it and the Movement Bureau about it, I felt that was sufficient.

Q Now, I show you Defendants' Exhibit F for identification, which is a memorandum from Mr. Partridge

to Mr. Gaynor and refers to a failure to write up the Amityville work program on October 11, 1974.

Were you on duty as assistant stationmaster on October 11, 1974?

A Yes; I was.

Q Did you or did you not write up the Amityville work program?

A I did not. Mr. Partridge did.

Q Now, would you explain for the record just what a work program is?

A In this case it was simply a message to the crews to explain that work was being done in the Amityville area, and they were to exercise caution in their approach to that particular area.

Q In other words, the railroad has track workmen out on the track?

A Right.

Q In the Amityville area?

A Right.

Q So that the crews in coming along will take proper precautions so that they will not kill or injure any of them; is that correct?

A That's correct.

Q It's a safety measure for your fellow employees;

is that correct?

A That's correct.

Q I show you --

A Might I elaborate on this just a bit, please?

Q Your counsel can handle it at the appropriate time.

I show you Exhibit G, Defendants' Exhibit G, a memorandum from Mr. Gaynor to you dated November 7th, which apparently covers three items. The first item was a failure to log Line 4 out of service from 2:00 a.m. until 4:55 a.m.

Did you in fact fail to log Line 4 out of service?

A No; I did not.

Q That is --

A That is, I did fail to log Line 4 -- did fail to make the entry in the log.

Q So that is not a false accusation by Mr. Gaynor.

A No. I simply forgot it that particular morning. I thought of it as I left the station, and I felt, as I was told before by Mr. Milroy, that the same sheet will be there that night when I come in, just enter it into the log as I come in, that night.

Q What is a TSP-119 form?

A That is simply a form that is used to record the work that is done by Penn Central employees for the Long Island Railroad. As they call it in to me and record it in the morning, I will record it on the TSP-119.

Q What do you do with the form then?

A I place it in the drawer in the stationmaster's office so they can take it upstairs into the stationmaster's office and report it.

Q Do you know what function or use this form performs for the Long Island Railroad? Is it part of their cost accounting procedure?

A That's correct.

Q In other words, this is their way of determining what their share of costs are at the joint facility known as Penn Station.

A That's correct.

Q As of November 7, 1974, had you been failing to fill out these reports and leave them with your superiors?

A Simply because no one made any reports to me. They ceased reporting anything to me.

Q This is the Penn Central foreman --

A That's right.

Q He wasn't making any reports?

A That's right.

Q Did you report this fact back to your superiors, that you were not receiving any reports from the Penn Central foremen in regard to work being done?

A No; I did not because I was not told to do it. I was told to make out reports when the reports are made to me, to make out a report, to record this report on the TSP-119.

Q Now, the third item in there refers to Allied worksheets.

A Right.

Q Is that the Maintenance which does the cleaning for both the Pennsylvania Station and the Long Island?

A That's correct.

Q What are those worksheets that they refer to?

A It's a sheet which gives in detail what the various workers are doing, the type of work they are doing on the various -- in various locations: offices, tracks, platforms and so forth, the work that they did and the name of the person.

Q And then are these worksheets a basis for the railroad to determine what payment goes to either Allied or the Penn Central?

A That's correct.

Q Now, the letter of Mr. Gaynor indicates that you were not signing the reports to attest that you were spot checking the cleaning. Were you or were you not signing these reports?

A No. I could not sign it simply because I could not check all of the things that the workers were doing. I could check some of it from time to time, and there is an office up on Seventh Avenue -- our main office, which I didn't even have a key, for the terminal superintendent, which is located up on Seventh Avenue, and since the intensity of the atmosphere here had become so strong after I went back to work, I felt that I should be careful about what I signed my name to, to be sure that whatever it is, it is something that I can verify.

Q In other words, you felt you could not sign the form unless you personally went all over every speck of work being performed by Allied throughout the Long Island areas and be assured that every bit of work was done; is that what you are saying?

A That's true.

Q Is that a mere spot check by you to see if certain of the work that was performed was insufficient?

A That's correct.

5-2

Q Now, I refer you to Defendants' Exhibit B, a letter from Mr. Gaynor to you dated November 15, 1974, and this refers to two incidents, one, Train 90 being delayed nine minutes on account of no communicating whistle.

Was that train in fact delayed for that reason?

A That train was delayed for that particular reason, to my knowledge.

Q What actions did you take in regard thereto?

A As usual, I tried to get it out as soon as I possibly could at --

Q How?

A At departing time in regards to this Train 90, it stated that it did not have any communicating whistle. This was after departure time, really, because I had the usher give it the "all aboard," and the train sat down on the platform. We continued to give it "all aboard" and nothing happened.

Finally, the conductor, having no communication, he went to the phone on the platform and told me that he didn't have any communicating whistle. I asked him, did he have a car inspector there. He said, "Yes, one is here on the platform but he's not here at the moment."

At the same time, I had Train 708 on Track 16,

1 who stated that he had a similar problem, and by this
2 time my assistant -- my relief man, Mr. Walter Kensky
3 and Mr. Charlie O'Brien, who was scheduled into the
4 station on Train No. 6011, arrived at 638. They walked
5 into the office and stood at the door, watching what
6 was happening. Mr. Walter Kensky, because the phones
7 were ringing greatly, and at this time we had moved into
8 Train No. 408's time, which was on Track 19, and they
9 were screaming for the signal -- it was their departure
10 time -- Mr. Walter Kensky attempted to give some relief,
11 but Mr. Charlie O'Brien held his hand out quietly in
12 front of him. I then took the radio and started down
13 on track platform 17. At that particular time Train No.
14 90 pulled out. I -- the only information I had on the
15 train, because I tried to reach him with the radio as
16 it was pulling out, is simply what he stated to me before:
17 No door lights.
18 I then dashed out to Track 16 and tried to
19 get to the bottom of what was holding up 708, at which
20 time we found that the coupling that had occurred
21 earlier was not simply making connection, and consequently
22 caused the train not to communicate or have any
23 door lights. We continued uncoupling the train or trying
24 to find first the spot where this weak link was, and we
25

found it and finally got this Train 708 out.

Basically, that was the situation.

Mr. Gaynor's assistant, Mr. Charlie O'Brien, who was there at the time, and with little help on his part -- and I'm sure he's the one that informed Mr. Gaynor of what had occurred -- did not tell him that he was right there and did nothing really to help.

Q At what point did you say you had first learned of the failure of the communicating whistle?

A Shortly after departure time, and departure of Train 90 is 6:38. I gave them a couple of announcements, "all aboard," and the train sat down on the platform, and finally the conductor went to the phone and called me. I would estimate that to be about 6:40.

Q Did you inquire of the conductor as to when he first learned there was a failure of the communicating whistle?

A He stated that he learned just then. He was getting ready to pull out, and he suddenly realized that he has no door light.

Q Approximately ten minutes before departure time, does that train receive a brake test?

A It does receive a brake test. This is --

Q And how is the brake test given?

A With the communicating whistle device.

Q And did you inquire as to whether that communicating whistle was operating during the brake test or as to how the brake test was given?

A This happens quite often. Sometimes a brake test is given to a train, and they --

Q I'm not asking what happens sometimes. I am asking whether you made an inquiry into this subject. Did you inquire of the conductor whether the communicating whistle had worked when the brake test was given or whether or how the brake test was given?

A No; I didn't. Right then, the immediate thing to do was to get that conductor and train out of there as soon as possible. The conductor was on the phone, and he doesn't -- he wants to get out as soon as possible, himself. If he is a good conductor, he states the problem, hang it up and try to go back and alleviate the problem, along with the car inspector.

Q Now, that train was brought in approximately an hour prior to departure time, was it not?

A That's correct.

Q And presumably the drill conductor and the drill engineer that would make that equipment move would also have to use the communicating whistle?

A That's correct.

Q And if there had been any failure in the communicating whistle, probably it should have been reported promptly to your office, should it not?

A It's supposed to be reported promptly.

Q So that if this delay occurred because of a communicating whistle failure that was known at the time of either the brake test or when the drill crew came in, those people were failing in their duty, right?

A Not necessarily. They could have not detected it at that particular time. This happened over and over again.

Q If the communicating --

A When the train comes into the station --

MR. HOLWELL: Your Honor, may the witness answer?

THE COURT: Yes.

A There are times when the train comes into the station in perfect order, and you get ready to move it, and nothing happens.

Q What I am asking, though, is if the communicating buzzer or whistle had failed while the brake test was being given and it wasn't properly reported to you, somebody was being negligent and failing

in their duty; right?

A The fact is, I don't know that it failed at that time.

THE COURT: No. He is asking you, if it failed at that time, they should have notified you?

THE WITNESS: Yes.

THE COURT: That is all you are being asked.

Q And you made no attempt to ascertain or find out whether somebody was failing in their duty? You just went ahead and got the train out and did not try to find out whether this communicating whistle had failed subsequent to these things or prior.

A Now, let me explain the time element here.

Train No. 708 is due out at 6:51. It was delayed. Train No. 90, due out at 6:38. Both trains were delayed. That's coming into 7:00.

5-2 My departure time, my tour of duty ends, my relief man is here in the office at 7:00. He came in on the 6:38. I stated in the log book that the trains were delayed because of the communicating whistle.

Now, getting into a whole line of reports or a whole ramification of why this or that happened five, ten minutes or an hour ago and so forth, with the car inspectors -- there was no time for that then.

Q Now, as assistant stationmaster, a management person, you are supposed to make efficiency checks on crews and other personnel in the station, are you not?

A That's correct.

Q What is the purpose of an efficiency check?

A It's simply a check that -- a checking on the crew of their book of rules.

Q Whether they are performing their duties properly; is that correct?

A Yes, generally speaking.

Q And in an instance like this, you felt no obligation to look into the matter in any way to determine whether the delay of that train was due to a failure of the crew to promptly notify you of the failure or whether it was actually an innocent equipment failure that occurred to late to have anything done about it.

A I know that the crew, as soon as they are --

Q Answer my question yes or no.

A Well, now, will you repeat the question, please.

MR. STOKES: Will the Reporter read the question.

(Question read.)

A I knew that the train was out of the station without any response being --

MR. STOKES: Your Honor, the question can be answered yes or no. I don't need --

THE COURT: Yes. Will you answer yes or no.

A The question --

THE COURT: The question is, did you feel any obligation to find out whether it was due to inefficiency on the part of the crew or not.

THE WITNESS: The fact is, sir, that the only way I could find that out would be later on in the day, when the crew returns to the station. The crew was out of the station.

Q The answer is, you didn't feel any obligation to look into the matter; is that correct?

A The fact is that I did not have the time to do it.

Q You didn't feel any obligation to look into the matter; is that correct?

MR. HOLWELL: I think the question is repetitive. The witness has answered it.

MR. STOKES: It is only repetitive because I don't get an answer.

THE COURT: Well, the failure to get an answer is sufficient.

A I always feel there is an obligation to look

1 into these matters.

2 Q In this instance, you did not, though?

3 A In this instance, the crew had left the

4 station, and I couldn't look any further into what had

5 happened.

6 Q Had the drill crew that brought that train in

7 an hour beforehand left the station?

8 A The drill crew that brought that --

9 Q The equipment into that platform.

10 A Tha drill crew, I don't know whether they had

11 left the station or not.

12 Q Now, as a management personnel, are you

13 strictly an eight-hour-a-day, five-day-a-week man,

14 or are you on call seven days a week?

15 A Technically speaking, seven days a week.

16 In a practical sense, five days a week, eight hours a day.

17 Q Now, I show you Exhibit H in evidence, a letter

18 from Mr. Gaynor addressed to you, dated November 8th,

19 noting that you have failed to make any reports of

20 routine efficiency checks. Do you recall receiving that

21 letter?

22 A I do.

23 Q Had you in fact been making efficiency checks

24 prior to that letter?

25

A I was told by Gaynor's predecessor to discontinue the practice.

Q And when was that?

A This was in about the beginning of 1973.

Q And from the beginning of 1973 to November of 1974, nobody told you that you were still supposed to make efficiency checks?

A No.

Q I show you Defendants' Exhibit I, a memorandum dated November 22, from Mr. Gaynor, addressed to you, in regard to extensive delay to Train No. 400. I apologize. This is not the clearest copy. Maybe we might be able to get a better copy before it is finished.

MR. HOLWELL: Let me see if I have a better copy.

THE WITNESS: I think we ran over this before.

Q Is this the instance involving Mr. Wership?

A Yes. This is the incident involving Mr. Wership.

Q And that train was in fact seventeen minutes late in leaving?

A That's correct.

Q And while I understand you subsequently had charges brought or saw that charges were brought against Mr. Wership, at the time you did not attempt to take him

1 out of service for failure to obey a direct order; is
2 that correct?
3 A That's correct. I consulted with 204.
4 204 gave him the order, told him to take the train out
5 of the station. In spite of this, Mr. Wership refused to.
6 Q And did you issue a direct order?
7 A Yes; I did.
8 Q But you didn't take him out of service for
9 failure to obey a direct order, insubordination?
10 A No; I did not. I informed him that 204 had
11 also told him to take the train out of the station.
12 He, in spite of it, remained in the station. The conductor
13 had already agreed, and in spite of everything that was
14 done, Mr. Wership delayed the train.
15 MR. STOKES: I seem to be missing J.
16 Q I show you Exhibit K, Mr. Harris, a memorandum
17 dated February 20, 1975 from Mr. Gaynor to you in
18 regard to delays to Train 802. Now, was Train 802 in
19 fact delayed about nineteen minutes on account of no
20 door light?
21 A Not in fact. Not in fact. The equipment was
22 delayed that long. In fact, the passengers were taken
23 from that train and placed on Train No. 1602, which
24 departs from Penn Station at 1:11, and the equipment was
25

sent out after we changed it, empty, to Jamaica, and it departed -- it was delayed that long, but it was simply 802's equipment.

Q And now, I show you -- Incidentally, the passengers were placed on which train?

A On the 1602, 1:11 out of Penn Station.

Q And what was the scheduled time of departure of 802?

A 1:01.

Q So that the passengers in any event were still ten minutes late?

A Ten minutes late, right.

Q I refer you to Exhibit L, a memorandum dated March 26, 1975, addressed to you in regard to failure to log in the arrest of a passenger, Frank Perlongo, on March 22nd, or the night of March 22nd, morning of March 23rd.

A All right --

Q Did that arrest take place in the stationmaster's office?

A Yes, sir. And on page number 121 in your log book, you will see it there.

5-4 Q And did you actually log this in?

A That's correct.

Q Did you respond to Mr. Gaynor and advise him that it was properly logged in?

A I told Mr. Partridge to tell him.

Q You didn't see fit to either send Mr. Gaynor a note or speak to him, either in person or on the telephone?

A No. I didn't feel that that was necessary. I told Mr. Partridge, and if I -- if I was a man who just went in and sat down at an office and did little all night long, I probably would have written him a letter concerning it, but it was clear that Mr. Gaynor was seeking to do precisely what you are doing today: pile up letters on me simply to come into court and to discredit my operation.

Q And you felt all along during the past year that Mr. Gaynor was trying to discredit your operation because you are a plaintiff in this lawsuit.

A With some exceptions, basically this has been the plan.

Q And you say, even though you haven't kept them, every day you would have one or more letters like this from Mr. Gaynor on your desk when you arrived at work?

A Numerous notes. Numerous notes.

Q Feeling that this was an attempt to set you up,

did you try to protect yourself by answering Mr. Gaynor regularly when he raised these questions? Did you write Mr. Gaynor back in response to these letters?

A I did write Mr. Gaynor in response to some of them.

Q Now, you normally park your car at Jamaica; right?

A Yes. I normally park the car there.

Q And the run on the car between Penn Station and Jamaica is eighteen or twenty minutes; is that correct?

A Seventeen or eighteen minutes.

Q And you are catching a train from Jamaica to Penn Station in the evening at roughly 10:30 at night; is that correct?

A That's correct.

Q Now, during that seventeen- or eighteen-minute run, having received the note the day before from Mr. Gaynor, did you attempt to write some note to him explaining that you could leave there when you went off duty, explaining to Mr. Gaynor that the accusation was not true or that your accusation was justified?

A No, I didn't.

Q Did you ever attempt to speak to Mr. Gaynor

and say to him, "Why are you trying to set me up," or anything of that nature?

A No; I didn't, because it was clear -- it was in my mind -- what he was trying to do.

Q Now, you were represented by counsel a year ago in connection with your application to this court. Did you communicate with counsel at all during this period and complain to them that you were being set up in retaliation for bringing your application?

A Well, I knew that my counsels are busy, and I am sure that they are interested in everything that's occurring and so forth, but I don't feel that I should run to them with every little matter that comes up. I have on a couple of occasions mentioned some of them to Mr. Holwell.

Q But you do feel that on every unusual occurrence, though, that you should consult with 204 or some superior and have them make the decision?

A And make the decision about what?

Q As to how to solve the unusual problem.

A If there's an unusual problem at Penn Station or wherever it happens to be on that railroad, 204 wants to know about it.

Q They want to know about it, but do they

1 necessarily want to make the decision, or do they want
2 you to make the decision on the spot?
3 A When it's involving that whole railroad, they
4 want to know about it, and they will make the decision
5 that they feel is necessary, and I feel that they should
6 know about it. We are not running trains simply from
7 Penn Station. We are running them from all over the
8 Long Island Railroad, and everything relates to everything
9 else.
10 Q I don't quarrel with you about advising 204
11 about incidents, but do you feel that 204 is the one to
12 make the decision as to how incidents are to be handled
13 while they are occurring?
14 A There are weeks that pass when I never consult
15 204 about anything, but if the occasion arrives when I
16 think that they should be in on something, I shan't
17 hesitate to call them.
18 Q Any unusual type of incident, if you don't
19 have an assistant trainmaster or trainmaster available
20 at Penn Station, you feel that you should call 204 and
21 get their direction and decision; is that correct?
22 A I feel that I should consult them. Incidentally,
23 the trainmaster, when he is on duty, he does the same
24 thing.
25

MR. STOKES: May I have just a moment, your Honor.

THE COURT: Yes.

(Pause.)

MR. STOKES: Just one further questions.

Q Mr. Harris, do you know a Mr. John Walker, project engineer for the Long Island Railroad?

A Walker?

Q Yes.

A He's an engineer?

Q Project engineer in Mr. Woodward's office or under his jurisdiction.

A Project engineer? No. I don't --

Q You don't know who he is?

A I don't.

MR. STOKES: I have nothing further.

THE COURT: Let's take a ten-minute recess.

MR. HOLWELL: Can we break for lunch, your Honor? We haven't seen a lot of documents which were just produced this morning, and the log book, for instance, is relevant to whatever entries are made and not made.

THE COURT: Do you have to look at those documents for redirect?

MR. HOLWELL: We have to examine the log book.

There are allegations in many of them that Mr. Harris failed to make proper entries in the log book.

THE COURT: There's only one entry in there.

MR. HOLWELL: No. Several of the letters said that the entries were not enough, and we would like to see what entries the other SM's made and put on the record.

THE COURT: All right. Be back at 1:30 then.

(A luncheon recess was taken.)

AFTERNOON SESSION

1:30 p.m.

E D W A R D H A R R I S, resumed.

MR. STOKES: If I could--

THE COURT: Yes, you have one more question?

MR. STOKES: Yes.

CROSS EXAMINATION (Continued)

BY MR. STOKES:

Q Mr. Harris, in regard to Exhibit L I believe you stated that in the arrest incident you had recorded it in the logbook; is that correct?

A That is correct.

Q Did you record it that night?

A I did that night--that morning.

Q What do you mean that morning, the morning of March 23rd?

A That is right. I don't know whether we have the correct time in here or not but I did report it the morning of the incident.

Q Right after it occurred?

A Right.

MR. STOKES: I wish to have--it is a complete solid book and I am only interested in pages 120 and 121,

your Honor.

THE COURT: All right.

MR. STOKES: I ask that that be marked in evidence.

THE COURT: Perhaps you can Xerox copies and substitute that in place of the book.

MR. STOKES: I would be very happy to do that overnight, your Honor.

THE COURT: All right.

MR. STOKES: I will withhold physically marking the book.

THE COURT: Is that satisfactory, Mr. Holwell?

MR. HOLWELL: We would like the whole book marked, sir.

THE COURT: What parts of it do I have to see? If you point out what other parts you want in I won't have to look at it.

MR. HOLWELL: I would like to mark it all as an exhibit and select pages from it.

THE COURT: That is perfectly all right.

MR. STOKES: We can work out whatever it is going to be but in the meantime rather than physically marking it, I will state for the record that I have the book and will show it to the witness and it is page 120 and 121.

Q I show you at the top of page 121 under the date of 3/22/75, Mr. Harris, is this the account of the arrest that you made or the log entry that you made in reference to the arrest?

A That is the log entry I made.

Q Now, Mr. Harris, I refer you to page 120, at the bottom of that page there is an entry by Mr. C.E. Scott.

What is the date of that entry?

A That is the date 3/23/75.

Q And above that there is an entry--what initials are those, do you recognize them?

A Walter F. Kempsky.

Q What is the date of that entry?

A 3/22/75.

Q Now, referring back to page 121, what is the date of your entry of this arrest?

A 3/22/75.

Q In other words, the entry that you made right after the arrest is out of order in the book, is that correct?

A It may be out of order in the book but that entry was made on that night.

Q And the entry immediately following it, what date is that?

A The entry immediately following is 3/24/75.

Q But anybody looking at the book would assume that the entry that you made of the arrest, about the arrest, was not made on the morning of the arrest, is that correct?

A I wouldn't assume that. I would assume it was made at the time that it is recorded.

Q In other words, the way you keep the logbook, you don't follow immediately after the next entry but you will cross over to the next page and put it in so it might end up out of order?

A No, not particularly. Sometimes I find that I am going to write something and I don't know how much space it is going to take and I want it all to be on the same page. So I might move from one page to the other page and start it on that page so I will have all the space I need to put that particular entry.

That is what evidently happened in this case.

Q You were never given any instructions of whatever entries you have to make were to follow immediately after the preceding entry?

A No, I didn't have to be given that instruction but you can see that the entries--nothing was changed in regard to that date in any way there.

Q I have no idea whether it was or not. All I can see, Mr. Harris--I don't want to argue about it with you--but it does follow after March 23rd and appears to be out of order; isn't that correct?

A It does follow after someone made an entry on the bottom at 3/23/75.

Q On March 22nd, Mr. Kempsky relieved you or did you relieve him?

A March 22nd?

Q 1975. Normally Mr. Kempsky is your relief, is he not?

A Some days.

Q You had worked March 22nd and Mr. Kempsky also worked March 22nd and he would have, in the normal course of events, relieved you?

A That is right.

Q So that Mr. Kempsky's entry on March 22nd would have been after you had been relieved and left, is that correct?

A That is correct.

Q So actually the only prior entry above that is at approximately the middle of the page for March 21, 1975 and I assume that those are your initials on that?

A That is correct.

MR. STOKES: I don't know whether your Honor wants to examine it at this point or wait until we reproduce it (handing to Court).

I have nothing further, your Honor.

Overnight I will endeavor to have the pages reproduced.

XXX REDIRECT EXAMINATION

BY MR. HOLWELL:

Q Mr. Harris, would you direct your attention to the log that Mr. Stokes was just questioning you about?

I direct your attention to the entry you made at the top of the page, 3/22/75. Can you tell me whether or not there are any entries after that 3/22/75, prior to March 26, 1975?

A After 3/22--

Q But before March 26, 1975.

A Yes.

Q How many entries are there?

A One.

Q What is the date of that?

A 3/24/75.

Q Does that entry take up the entire page of page 121 of the log?

A It takes up--no, it does not.

Q Is there an entry after that?

A There is an entry after that.

Q Is that dated?

A Not dated at all.

Q Is it in different handwriting than the entry for 3/24/75?

A It is.

Q But it is undated?

A It is undated.

Q What is the next entry after this undated entry?

A After the undated entry it is 3/27/75.

Q And where does that come on the page?

A At the top of the page.

Q Subsequent to the entry date of 3/27/75, is there another entry below that?

A There is.

Q What is the date of the entry below this 3/27/75 entry?

A It is undated.

Q Let me direct your attention to this entry here a quarter of the way down the page and ask you what that date is.

A 3/26/75.

Q Is it true there is an entry dated 3/26/75 made

in this log after 3/27/75 entry?

A That is correct.

Q Can you tell whether or not this is different handwriting at 3/27 than the one at 3/26?

A This is a different handwriting.

B2 Q I direct your attention to the entry immediately following that. That would be an entry, two entries after 3/27 entry. What is the date on that?

A 3/26/75.

Q Now, Mr. Harris, I would like to show you what is Defendant's Exhibit L in evidence, which is a letter from Mr. Gaynor to you and ask you what the date of that document is.

A It is March 26, 1975.

Q Do you recall receiving that on that date, Mr. Harris?

A Approximately, yes.

Q Had Mr. Gaynor or anyone else fired you March 26, 1975 or reprimanded or brought to your attention that you failed to make a log entry with regard to the arrest of a passenger?

A No, not at all.

Q Did you in fact make the entry here that you dated 3/22/75 on 3/22/75?

A That is correct.

Q Did you make it prior to receiving this letter from Mr. Gaynor?

A I did.

Q I want to direct your attention to the period of time after you took this book of rules examination in September of 1974 and were reinstated in service.

Do you recall approximately when that reinstatement occurred?

A The first week in October.

Q Of 1974?

A Of 1974.

Q I want to direct your attention generally to all the exhibits that the defendant marked in evidence and questioned you about on cross examination, being a series of letters from Mr. Gaynor to yourself between October 1974 and September 1975.

I want to ask you with regard to any of those letters whether Mr. Gaynor at any time ever spoke to you in person regarding the activities he was complaining of therein?

A Not at any time.

Q Did he ever ask you for any explanations as to what occurred?

A No.

Q Did anyone else other than Mr. Gaynor, Mr. Partridge ever talk to you about any of the incidents referred to therein?

I would like to direct your attention to Defendant's Exhibit I in evidence which is a letter dated November 22, 1974--rather a memorandum--written by Mr. Gaynor to yourself which appears to involve an incident with an engineer, Mr. Wership, who failed to follow your directions and the directions of 204 in proceeding out of the station with an oral understanding as to how the doors on the train were to be operated.

Can you explain how you eventually got Mr. Wership to proceed out of the station? What did you do when he refused to take the train out on oral command?

A I finally ran up to the stationmaster's office and wrote out a little note, gave it to the conductor who willingly ran up behind me, picked up the note, took it back to him rather than delaying the train further and the conductor felt it is necessary to follow me dashed back down.

Q Your function as assistant stationmaster is to see that the trains get out on time?

A Basically.

Q Did there come a time after this incident when you wrote a report to your superior regarding the activities of Mr. Wership?

Did there come a time after Mr. Wership balked at taking the train out of the station that you in fact made a report to your superior with regard to Mr. Wership's activities?

A Yes, I did.

Q What happened after you wrote the report?

A I wrote the report to Mr. Jack Shelter I believe the name was, road foreman of engine and they gave Mr. Wership a trial I was told--management didn't bother to inform me on it--but I was told by the conductor because he attended the hearing himself.

The result of the hearing--

Q What was the result of the hearing?

A It was that the engineer was given a day out of service without pay.

Q Suspended for a day because he failed to follow your direct orders and failed to follow the direct order of 204?

A That is correct.

Q What is Mr. Wership's race?

A He is white.

Q I direct your attention now, Mr. Harris, to Defendant's Exhibit F in evidence which is a memorandum from Mr. Partridge to Mr. Gaynor dated October 11, 1974.

Have you ever seen that prior to this morning?

A No, I haven't--I did see it, I am sorry, at one time in Mr. Stokes' office.

Q Prior to that had you ever seen it?

A No, I have not.

Q It refers to an Amityville work program which Mr. Partridge says you did not have written up.

Will you explain to me the circumstances surrounding this memorandum from Mr. Partridge to Mr. Gaynor in your own words?

A Yes. I had finished my tour of duty and my relief man did not show up at about 7:30 in the morning. He was supposed to have been there at seven.

At about 7:30 Mr. Milroy contacted Jamaica to find out where was the relief man and was told at that time that he had called off sick and had gone to the hospital.

Consequently, I had to put in 16 hours, I had to double up. At this particular time, it is during commission hours so in a case like that, trains are coming in every minute, coming and leaving every minute, sometimes

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1 two of them a minute.

2 The assistant station manager's function then is

3 simply to keep that train record sheet up to date, that

4 he record every train that reaches Long Island City,

5 Harold Tower and when it arrives into the station or

6 when it is placed from the yard on a particular track as

7 well as when the eastbound passenger trains depart.

8 In addition, a great number of PJ's and PW's,

9 whatever, equipment trains going to various places during

10 the morning. It is a hectic period and all his hands are

11 full just doing that.

12 At about 10:00 we come out of this commission

13 hour period, things begin to slow down a bit.

14 This time Mr. Partridge, the station manager,

15 the full fledged station manager arrived, took over and

16 said, "Ed, you go to lunch, be back at about 11:00."

17 It was also at this time and during this period

18 that the Amityville program is supposed to be going into

19 effect. Mr. Robert Partridge took care of everything dur-

20 ing this period.

21 I got back at about 11:00, two minutes after I

22 walked in the door. Mr. Gaynor walked in and says, "Where

23 is the Amityville program? You have it there?"

24 I simply said to him, "I imagine it is there,"

25

1 and started looking to see whether it was really there
2 or not.
3 Mr. Gaynor turned around, walked out of the door.
4 By the time he got on the other side of the glass enclosure
5 I discovered the sheet, in fact Mr. Partridge had made it
6 out and I yelled to him but he left.
7 Evidently he made whatever point he wanted to
8 make. That was the end of that.
9 The next thing I heard is when I saw this
10 letter in Mr. Stokes' office.
B3 11 Q I would like to direct your attention, Mr.
12 Harris, to Defendant's Exhibit H for identification and
13 in evidence, which is a memorandum dated November 8, 1974
14 from Mr. Gaynor to yourself.
15 It says: "During a routine check of the
16 efficiency reports I noted you failed to make any reports
17 this year."
18 You stated that you had been directed by Mr.
19 Milroy that you do not have to bother making these
20 efficiency reports, is that correct?
21 A After or shortly before Mr. Mel Stewart left
22 the office of general superintendent I received a letter
23 stating that we were to discontinue making out the
24 efficiency reports, the assistant station manager.
25

1 The regular is $341.

2 MR. STOKES: I also, your Honor, have a witness

3 who will be made available, who will put in the figures.

4 THE COURT: All right. I thought Mr. Harris

5 would know.

6 MR. STOKES: If I could have just about a

7 two- or three-minute recess, your Honor --

8 THE COURT: All right.

9 (Recess.)

10 RECROSS-EXAMINATION

11 BY MR. STOKES:

12 Q Just very briefly, Mr. Harris. You say you did

13 receive a written letter from Mr. Stewart in regard to

14 discontinuing efficiency checks?

15 A Yes.

16 Q Do you have a copy of that letter?

17 A No. Unfortunately, I don't have a copy of that

18 letter. I haven't been able to find it.

19 Q Now, in regard to the Amityville work program,

20 I just wanted to see if I understood your responses to

21 Mr. Holwell correctly.

22 Were you saying that because Mr. Partridge,

23 the stationmaster and your superior, was on duty at

24 approximately the same time, you had no responsibility

25

for writing up the Amityville program?

A I was at lunch at that time.

2-2 Q Do you know what time the workmen were scheduled to go to work at Amityville?

A No; I don't offhand.

Q Do you know what the running time is on an average train from Penn Station to Amityville?

A Approximately. Approximately.

Q What is the approximate running time?

A About 55 minutes.

Q So that if the workmen were scheduled to go to work at 10:00 in the Amityville area, that means that any trains leaving Penn Station at around 9:00, in the vicinity of 9:00, should have received an Amityville work program write-up; is that correct?

A I'm not sure if those facts are correct. Now, I don't know that those facts are correct.

Q But I mean, if the men start at ten, then properly speaking, any train leaving around 9:00, maybe even a little earlier, just to be on the safe side, should have received a write-up at the work program; is that correct?

A That's correct.

Q At what time did Mr. Wership relieve you to go

1 to lunch?

2 A Mr. Partridge.

3 Q What time did Mr. Partridge relieve you to go

4 to lunch?

5 A At 10:00.

6 MR. STOKES: At 10:00. I have nothing further

7 from this witness.

8 THE COURT: All right. You may step down,

9 Mr. Harris --

10 MR. HOLWELL: I would like to ask one or two

11 questions.

12 THE COURT: All right.

13 REDIRECT EXAMINATION

14 BY MR. HOLWELL:

15 Q Mr. Harris, with regard to these work programs,

16 do you know whether or not the only way a train out on

17 the tracks knows that they are going to come across

18 workers is by receiving a work program from the

19 stationmaster's office? Are there any signals out on

20 the tracks?

21 A No. That's not the only way. They are

22 obligated to have flags set up for that particular

23 purpose. I'm --

24 Q When you were not allowed to return to your job

stationmaster, is that correct?

A Specifically mostly on the second tour of duty. When he worked the afternoon tour of duty I was right there and he was under my eyeballs you might say. I was watching everything going on when I was there and he was working there.

Q Did you ever have any occasion to remove him from his position or chair as assistant stationmaster and substitute somebody else?

A Yes.

Q Approximately when was that?

A I can give you the exact date here, I have got it, a record of it.

July 21, 1971 I had to remove him from the chair as assistant stationmaster and sat down and functioned myself until I got the place straightened out.

Q What was the problem?

A He lost track of the train movements and when I suggested to him that he get up to date, find out how trains were coming by contacting the tower, he refused.

So I gave him an arbitrary order, I said, "You have to get your records up to date so we know what is coming."

He said, "I will do it after a while."

I said, "No, you will do it right now."

He said, "No, I won't."

Then I said, "Then get out of the chair and I will do it."

So he got up and I sat down and brought his records up to date and about 25 minutes later we had the place straightened out. I said, "If you want to sit down and behave yourself and do as I tell you you can. If you don't, you can go home."

So he sat down and went back to work again.

Q Had you ever had any other incident with any other assistant trainmaster similar to this?

A Assistant trainmaster?

Q Assistant stationmaster.

A Not of that nature, no, sir.

Q You had problems but no other way you had to actually move the assistant station manager and take over and perform his function?

A That is I had other instances where I said to assistant stationmasters, you better get your records up to date so we will know where we stand with the trains, and they would do it.

Q You never had one tell you he will do it later?

A No.

Q You never had to order someone twice to do it?

A No, sir.

Q During your tenure as terminal superintendent did you have other occasions to censure or reprimand Mr. Harris?

A Yes.

Q Were any of those in writing?

A Yes.

Q Have you maintained your own copy of your letters to Mr. Harris of censure or reprimand?

A Yes, sir.

Q Are these the documents you have before you?

A One letter dated April 1, 1971 covering an incident on March 31, 1971.

Then the one on July 23, 1971 concerning the incident that I had just described from July 21, 1971.

And there is another one dated October 6, 1971 concerning his performance on October 1, 1971.

And another one dated February 28, 1972, concerning an incident dated February 24, 1972.

And another one dated March 3, 1972 in the form of a question, what took place on the same date, March 3, 1972.

Those five pieces of correspondence I have on Mr.

1 this testimony about what happened to him in 1968 and
2 1969, and I am sure it was for some purpose of trying
3 to prove something on his part, that it's not just
4 wasting the Court's time.
5 Consequently, I am trying to bring in one of
6 his supervisors to show the other side of the coin.
7 THE COURT: All right. I think he can cover
8 the area that Mr. Harris testified to.
9 Q Mr. Stewart, did you ever have any conversations
10 directly with Mr. Harris concerning his job attitude
11 or his job performance?
12 A Yes; I did.
13 Q Approximately when did these take place?
14 A Well, the principal one that I recall occurred
15 right after this incident, where I had to take him out
16 of the chair and do the work myself, and the next day
17 I took him into a room where he and I were by ourselves,
18 and tried to impress him that if he wanted to get ahead
19 on the Long Island Railroad, to be an assistant
20 stationmaster and be considered for anything else, he
21 was going to have to shape up and adopt a different
22 attitude, that he was going to have to cooperate, work
23 hard, try to learn to do his job faster, keep up with
24 the work and not give his superiors any argument about
25

what he had to do.

His answer to me, if I recall his exact words, were, "I'm only interested in one thing: the Long Island Railroad doesn't have any general managers or vice presidents who are black, and I'm going to do everything that I can to see that they do."

So I just terminated the conversation right there. I said, "There's no use of me talking to you if that's your attitude."

Q Now, during your period as terminal superintendent, did Mr. Harris assume responsibility and make decisions?

A Only when he was forced to.

Q He never showed initiative and would try to do this on his own?

A That's right. If there is anybody else there that he could pass the buck to, that's what he did.

MR. STOKES: The witness is available, your Honor.

MR. MC GANNEY: May we have a few minutes, your Honor?

THE COURT: All right. We will take a recess.

(In the robing room.)

MR. STOKES: First, your Honor, I want to

take is the seven day figure and divide that for five days and that is where it comes out. That is usually their lowest grade.

BY MR. McGANNEY:

Q Do the permanent ASM's receive the same pay as extras?

A No, sir.

Q They are paid more?

A That is based as I explained, there are various pay grades that the regular men, and they normally, if they show efficiency and dedication to the job and it is recommended, they are recommended for a pay increase and we have a step-up, steps in grade.

Q Would there ever be a case where the extra is paid as much as a permanent?

A No, sir, only on the lowest grade when it is divided into five days out of the seven.

Q Let us take a five day work week. Is there a situation where an extra would make the same amount?

A Yes, sir.

Q As a permanent?

A Yes, sir.

Q The highest extra?

A The lowest grade.

that transpired after that.

A Well, Mr. Rizzacasa came into the office and confronted Mr. Harris with the fact that there were no announcements made and track change signs posted with regard to Train 708.

At that time, Mr. Harris said, "Well, you have an assistant trainmaster on duty" -- meaning myself. I was writing the report, and this is really when I started to listen to the conversation.

Mr. Rizzacasa informed Mr Harris that it was his responsibility to, as the assistant stationmaster, to insure that the announcements were made by the usher and that the track change was made for the public.

I think at that point Mr. Harris was upset with the way Mr. Rizzacasa was talking and he said, "Don't holler at me. You can do that home, but not here."

Mr. Rizzacasa told him to have the announcement made, and Mr. Harris was arguing with Mr. Rizzacasa, and he said, "All right. You're out of service."

Q Did Mr. Harris refuse to have the announcement made?

A I don't know if there was an actual refusal. The fact is, he continued to protest with Mr. Rizzacasa.

Q And what happened? What did Mr. Harris say

after Mr. Rizzacasa told him he was out of service, or to go home?

A Well, he, you know, picked up his personal belongings and put on his coat and said, "I'll see you in court."

Q Did you say anything to Mr. Rizzacasa after that?

A No; I didn't.

Q Did Mr. Rizzacasa direct the usher to then make a track announcement?

A Yes; he did.

Q As an assistant trainmaster, must you know the various signals within the station?

A Yes.

Q Must you know the signal locations within the station?

A Yes.

Q Must you know the location of telephone booths within the station?

A Yes.

Q And in the tunnels?

A Yes.

Q As an assistant trainmaster are you required to have knowledge of the book of rules?

same in Penn Station as in Jamaica.

Q He didn't give you special instructions at all?

A With regard to what? I don't understand --

Q Did he tell you to keep a close watch on the operations?

A No. He didn't have to. That's my job.

Q And during this time, from October 1974 to September 12th, you were on the same shift with Mr. Harris?

A Yes.

Q He was the man you worked with?

A Most of the time.

Q Most of the time?

A Yes.

Q And you never had any reason to file any reports about Mr. Harris, complaining about the performance of his duties?

A No; I did not.

Q You were working with him six hours a night?

A Well, I was with him total eight hours, but I mean in close proximity five to six hours, yes.

Q And you noticed that Mr. Harris usually followed through on the performance of his duties, did you not?

A Yes. I didn't have any problem with him.

Q And you had never had any reason to reprimand Mr. Harris for failing to perform his duties during that time?

A Not to the best of my recollection.

Q And you never noticed anybody else reprimand Mr. Harris, did you?

A Well, when I was on duty, I used to be with Mr. Harris, with the exception of when Mr. Rizzacasa came in in the morning.

Q But until the week of September 8th, you never noticed anybody reprimand Mr. Harris; is that right?

A Not that I can remember.

Q Now, coming down to the week of September 12th, that was the Friday that Mr. Harris was dismissed. You would have been off on the previous Friday and Saturday nights; is that correct?

A That's right.

Q And then you were sick on Sunday, Monday and Tuesday?

A Well, it would be --

Q Sunday night?

A Well, actually if you want to say, Monday, Tuesday and Wednesday.

Q Nights?

A That is correct.

Q Do you recall what time you made that decision?

A The exact minute I don't. I know that train, the 1611 is due to arrive at Penn Station at 6:38. My instruction was that if the train was running late, to substitute equipment for the PWA-648, which would be the equipment of the train 708, which was already on Track 16.

Q And at some time prior to 6:38, you heard that the train was running late?

A Yes. At 6:04, from Howard tower.

Q And you called the crew of the train and told them of the change?

A I had told them that there might be a change. This was prior to any change that was made.

Q And then, when you decided to make the change, what did you do?

A I notified them via the radio. They were on the equipment that they would be using.

Q Where was Mr. Harris at this time?

A He was right there with me.

Q Did you tell him that you had made this decision?

A Yes. He knew about it.

A It depends on what you mean by yelling. He was upset that--

Q All hopped up?

A I wouldn't say hopped up. I would say he was annoyed, raised his voice.

Q Right off the bat, the first words out of his mouth?

A He wanted to know why there was no announcement made and the sign had not been changed.

Q Would you say that he directed Mr. Harris to make an announcement?

A I don't remember the exact words that each one said back and forth to each other. I know he said either to make the announcement or have the announcement made by the usher. The exact words I am not sure. But he was instructed to make the announcement or have them made.

Q Normally who would make an announcement?

A The usher would.

Q There is a union rule, isn't there, that the usher normally makes the announcement?

A I'm not conversant with the union rules as far as what the ushers are concerned with but the usher normally does. That is the scope of his duty.

Q Mr. Harris didn't refuse to do what Mr.

Rizzacozza told him, did he?

A He continued to protest the fact with Mr. Rizzacozza.

Q He kept saying that you are in charge?

A He did refer to me and say I was in charge, that is correct.

Q After Mr. Harris left did Mr. Shearer come into the office?

A Yes, he did.

Q He came in and said something to Mr. Rizzacozza?

A He was saying something that he made a mistake and thought we were talking about another train.

Q Did you say anything to him?

A To who?

Q Mr. Shearer.

A No, I did not.

Q Mr. Rizzacozza say anything to him?

A He may have. I can't remember what he said to him but I know Mr. Shearer did come in and say he had made a mistake.

Q He came in twice, didn't he, sir?

A He goes in and out so I can't say.

Q He came in twice to say that very same thing?

A I don't recall if it was twice. I know he said

meant?

A No, he wasn't talking to me, he was talking to Mr. Rizzacozza.

Q But you were sitting right at the very same table?

A Yes, I was.

Q It isn't in your report, no doubt about that?

A That is correct.

Q You didn't think it was important enough?

A That is correct.

Q You never heard of anyone being taken out of service or having failed to make an announcement, have you?

A I can't say that I have.

Q Pretty drastic action, wasn't it?

A Removal from service on the Railroad for not complying with any rule you can say that is drastic. I have seen people taken out and I have taken men out myself.

Q This all happened in about two minutes?

A Two, maybe three minutes.

Q You knew Mr. Harris had a lawsuit against the Railroad, did you not?

A I was not aware there was one.

A About seven and a half years approximately.

Q You have been an assistant trainmaster since August 1974?

A That is correct.

Q Later in March you had to take a second written test and a physical characteristics test?

A Yes, I believe it was March.

Q For that you had some special tutoring?

A I wouldn't call it special tutoring. 11 of us got together and discussed the physical characteristics of the Railroad.

Q It was a $5 course, you all chipped in?

A We didn't chip in. There was no $5 course.

Q It wasn't a $5 course?

A No.

Q The first time you took that you didn't pass it, is that right?

A That is correct.

Q You weren't taken off service, were you?

A No, I was not.

Q You took a second test?

A Yes, I did.

MR. McGANNEY: I have no further questions.

THE COURT: Any redirect examination?

must an assistant stationmaster know the yard layouts?

A Yes, he must.

Q Since you joined Long Island Railroad have there been times when Mr. Harris has come under your supervision?

A Yes, he has.

Q When was that?

A In 1969 he first came under my supervision as an extra assistant stationmaster and later on when I came back to New York in 1973.

Q Have you had occasion to directly observe his work?

A In 1969 I did. He worked afternoons then with me on several occasions and since he was brand new at that time I didn't write him up or anything else. He got verbally reprimanded. He had to be replaced --

MR. MC GANNEY: I move to strike. It is not responsive to the question.

THE COURT: What were your observations of him when you had him?

THE WITNESS: Poor attitude, he was unable to do the job.

Q In what way was he unable to do the job?

A He was uanble to keep identity of the trains

1 going in or out, where the trains were placed. In the
2 rush hour we had some difficulty.
3 Q Did you have occasion to reprimand or
4 criticize him?
5 A I criticized him not severely because, as I
6 say, he was just learning, just an extra ASM.
7 Q Were there times when you took him out of his
8 chair and did his job for him?
9 A Several occasions.
10 Q Why didn't you give him a written reprimand?
11 MR. MC GANNEY: Objection.
12 THE COURT: Sustained.
13 Q Since that time has his performance substantially
14 improved?
15 MR. MC GANNEY: Objection.
16 THE COURT: How long have you personally
17 observed him since 1969?
18 THE WITNESS: Since 1973 when I came back to
19 New York, sir.
20 THE COURT: You didn't have any occasion to
21 observe him between 1969 and 1973, is that correct?
22 THE WITNESS: Yes.
23 THE COURT: When in 1973 did you observe him?
24 THE WITNESS: In 1973 I didn't come in contact
25

with him until I would say late -- the early part of September we were having trouble with a specific train.

Q Did you write written reprimands for Mr. Harris at any time you observed an infraction?

A No, I did not.

Q Has anyone told you to write reprimands against Harris?

A No, no one told me.

Q Has anyone told you to get Mr. Harris?

A No.

Q Has anyone told you to write him up for everything and anything?

A No.

Q Mr. Dixon?

A No.

Q Mr. Steele?

A No.

MR. MC GANNEY: Objection.

THE COURT: I will permit it.

Q Mr. Gaynor.

A No.

Q In fact, the day before you took Mr. Harris out of service he had exhibited a very poor attitude about his job --

MR. MC GANNEY: Objection.

THE COURT: Sustained. Ask him what happened the day before.

Q Did you observe Mr. Harris' actions two days prior to the date in which you took him out of service?

A Yes, I did. I think it was Wednesday, September 10, I had come in and through directions to Mr. Gaynor, our terminal superintendent, he wanted to hold Mr. Harris over to assist me in giving information to the public because I was short a man.

I told Mr. Harris this that morning when I got in and he said he was unable to stay because he had his car parked in the wrong place and he would get a ticket for it. Since I had Mr. Lansperg then, who was unexpected that morning, I thought he was out sick, I told him, I said, "It's all right to go ahead and to go home this time but you should be able to stay an extra hour if I need you."

With that he just left without no answer. On the following day, the next day, I got in. Our assistant stationmaster failed to report, Mr. Pete Gaynor, and I held Mr. Harris over. At 7:35 he said, "Gentlemen, I am leaving. I am catching the 7:41." I said, "If you catch the 7:41 without my permission you

1 will not be in tonight." With this there was no other
2 conversation and Mr. Harris stayed.
3 Q Did he mention anything to you about tickets?
4 A Yes. He said, "I am going to get a ticket."
5 He said, "You are going to pay." I said, "We are not
6 responsible where you should leave your car. You should
7 know you might be held any part of the morning. You
8 are part of management, a seven day man and you work
9 eight, nine, ten, twelve hours if you have to."
10 Q Did he request that he be allowed to go to
11 Jamaica and move his car and come back?
12 A I wouldn't let him anyway. It would take too
13 long and I wouldn't need him then.
14 Q Did you make a written reprimand for this
15 incident?
16 A No. I did not. It wasn't necessary.
17 Q In the time in which you have been Mr. Harris'
2-2 18 supervisor, how would you describe his work performance?
19 MR. MC GANNEY: I think we have had descriptions
20 of the times Mr. Rizzacasa has observed this. I don't
21 think any more is called for.
22 THE COURT: Yes. It's repetitious.
23 Q Is there anything else you would like to say
24 about his work performance?
25

MR. MC GANNEY: Objection.

THE COURT: Is there anything else you observed about Mr. Harris?

Q Is there anything else you observed about Mr. Harris?

A Nothing except his attitude hasn't changed since 1969 when I first knew him. He hasn't learned anything else since 1969. He hasn't been aggressive. He is not a take-charge man of any sort. His personality is strictly nil and his fellow employees feel that way also.

MR. MC GANNEY: I move to strike.

THE COURT: Yes, the last part will be stricken.

Q Do you find that Mr. Harris makes decisions and takes responsibility?

MR. MC GANNEY: Objection.

THE COURT: He already answered that, Mr. Rubin.

Q As a member of the operating department, must all operating personnel pass a book of rules examination?

A Yes, they must.

Q How often are you tested on the book of rules?

A Management right now is examined every year.

Q In fact, recently you have been required to learn not only the book of rules but to learn the physical characteristics of the entire railroad, is that

correct?

MR. MC GANNEY: Objection.

THE COURT: Sustained.

Q Is there anything new you had to learn at your level of management?

A Upgrading the safety of the railroad and have management qualified on all characteristics of the railroad.

Q What does the physical characteristics of the railroad entail?

A Every interlocking, every signal, every siding, and every station on the railroad.

Q This is not only the Penn Station area but from Penn Station out to Montauk?

A Out to Montauk, Long Beach, Hempstead, through every dead end terminal we have.

Q Have you had to prepare for this examination on your own time?

A Yes, I did.

Q Were you paid for it?

A No, I wasn't.

Q Since you joined the railroad has it been your observation that the testing practices have become stricter?

A Yes, they have.

Q Back in August 1974 did you receive a note from Mr. Harris requesting that his periodic examination be rescheduled?

A I did not receive any note from Mr. Harris. The morning before he was to report he asked me for the night off. I informed him that we are short of assistant stationmasters at that time and that I was unable to do anything for him and it's not unusual that a manager or part of management go to these book of rules classes after their tour of duty, before their tour of duty, or between their tour of duties.

Q. Did there come a time the next morning when you learned Mr. Harris had not shown up for his exam?

A Yes, I was informed by Mr. Greer who is the examiner that Mr. Harris was an absentee from the class of book of rules.

Q Did you have people try to contact Mr. Harris?

A Yes, I did. Mr. Bob Partridge called constantly all day to find out what happened to Mr. Harris.

Q Did he receive an answer?

A No, he did not.

Q When there had been no word from Mr. Harris, did anyone direct you to have his job covered for the

1 night?

2 A I brought this to the attention of Mr. Steele

3 and Mr. Steele says, "If he doesn't call by such and

4 such a time, I will have his job covered and if he does

5 show up tonight to send him home."

6 Q Did you leave a message with anyone in case

7 Mr. Harris did show up?

8 A I left a message with Mr. Partridge stating

9 that if Mr. Harris were to come in that night he was to

10 be sent home.

11 Q Was he told that he was to be taken out of

12 service or to be sent home?

13 A He was not taken out of service, he was just

14 relieved for that evening.

15 Q Did you leave instructions that Mr. Harris was

16 to contact Mr. Steele or that Mr. Steele would contact

17 him?

18 A He was to contact Mr. Steele the next morning.

19 Q By the way in notifying an extra assistant

20 stationmaster to cover a job when you don't know when

21 the regular will be back, what is the general practice

22 and procedure?

23 A Well, on the instance that Mr. Harris was there,

24 he had the next three days --

25

MR. MC GANNEY: I object to this. He asked for the general practice and procedure.

THE COURT: Yes.

A We would cover the job until the assignment was filled.

Q Is it unusual to notify the extra to be available for more than one night?

A Yes.

Q Is it unusual?

A No, it's not unusual, no. We would make him cover the full assignment because we can always cancel but we find it rather hard to have the assignment covered.

Q At that point no one knew the whereabouts of Mr. Harris?

A No one knew whether he was in the hospital, had an accident or what.

Q Subsequently Mr. Harris did return?

A Yes, he did return that evening.

Q Was he sent home?

A Yes, he was sent home by Mr. Partridge.

Q Mr. Harris was subsequently rescheduled for his periodical examination, was he not?

A Yes.

Q Did you schedule that exam?

A No, that is a directive from Joe Gaynor who received that from John Greer.

Q Did there come a time this September when the railroad was having difficulty with getting a certain train, PWA-648 out on time?

A Yes, there was.

Q What was the situation involved there?

A That was the early part of September. I received a report that Mr. Dixon wasn't receiving enough information from New York as to why this train was going in late and he wanted me to alleviate the problem.

Q Did you attempt to determine the reasons for the delay?

A Yes, I did.

Q What did you do?

A I rode 1611.

Q 1611 is the train whose equipment would become PWA-648?

A Yes.

Q Did you resent having to do this?

A No, I didn't. It's part of my duty.

MR. MC GANNEY: I object.

Q Did you determine the reason why PWA-648 was leaving late in the morning?

A Yes, the job wasn't being done properly over there. I made the equipment changes that alleviated the problem and should have been done before I recommended it, but I had to do it.

Q What instructions did you leave?

A I left instructions that Train 805 which would only turn for 708 was to make PWA-648 and 1611 upon arriving in New York would make 708.

Q Did you ride Train 1611 in on Friday morning?

A Yes, I did.

Q Was it running late?

A Approximately three minutes.

Q Was the equipment change made?

A Yes, it was.

Q What time did you arrive at Penn Station?

A Approximately 6:41.

Q What did you observe?

A I came in on Track 15 and Mr. Lansperg was up at the stationmaster's office and he called Train 1611 by the radio to which I answered and told him who I was and he said, "Well, 1611 will be crew and equipment for 708." I informed the crew of this. After we stopped I disembarked the train and walked east on Platform 8.

While walking east on the north side of the

2-3

platform which is Track 16 I noticed people standing there looking at a blank track. No announcements were being made. I walked upstairs, the fifteenth gate, and looked at 16. 16 had the 6:50 posted which is Train 708. No one was at the gate directing people and there were people standing at the gate. I then walked into the stationmaster's office. I stood behind Mr. Harris, Mr. Lansperg and Mr. Joe Shearer who was the announcer and usher at that time and I said, "When are you going to decide to make an announcement of a track change on Train 708?" He then stated --

Q Who is "he"?

A Mr. Harris then stated, "Don't tell me, tell him." I said, "I am telling you when are you going to make it?" And he said he is the assistant trainmaster and tell him to make it, not me.

With that I informed Mr. Shearer did he know of a change on Track 708 and he said, "No, I did not," and I said, "Make the announcement."

The first announcement he made was wrong. He was confused. The second announcement I instructed him to make, he made properly. I then turned to Mr. Harris and told him that it was his responsibility to see that the usher and the announcer knew of the track

change and that the proper announcements were made and that is why he is the supervisor here. With that he said, "Don't yell at me here. You do that at home and not here." With that I took Mr. Harris out of service for insubordination and for being derelict in his duty as assistant trainmaster.

Q You did order the usher to make the announcement?

A Yes, I did.

Q Mr. Rizzacasa, I show you Plaintiffs' Exhibit 15 in evidence which is a transcript of the track announcements made in Penn Station on the morning of September 12. When was the first track announcement made for Train 708 leaving at 6:50?

A At 6:47 and 30 seconds.

Q Was any other announcement made prior to that time notifying the public of the track change?

A Yes, there was at 6:46 and 24 seconds which was an improper announcement. The first announcement Mr. Shearer made.

Q Was there any other announcement prior to that notifying the public of 708?

MR. MC GANNEY: He is asking for Mr. Rizzacasa's knowledge or what?

1 went to the stationmaster's office?

2 A No, I did not.

3 Q When you went into the office three gentlemen

4 were there, Mr. Lansperg, Mr. Harris and Mr. Shearer?

5 A That is correct.

6 Q This is about--would you say between two or

B2 7 three--

8 A 6:45, around there.

9 Q 6:44, 6:45?

10 A Somewhere around there.

11 Q You started talking loud right away?

12 A Definitely, I was upset.

13 Q You asked Harris when the announcement was going

14 to be made?

15 A That is right.

16 Q Did you then take Mr. Harris out of service be-

17 fore the usher made the announcement or after?

18 A After.

19 Q After the usher made the announcement?

20 A After I asked the usher had he received any

21 track change from Mr. Harris and he said no I did not.

22 Q Then you directed him to make the announcement?

23 A I directed him to make the announcement.

24 Q That was the announcement he made at 6:46?

25

Q Did Mr. Shearer come back in again a second time?

A Yes, he came in several times before he was relieved that morning.

Q Did he again discuss this situation with you a second time?

A No, I would not discuss it again with him.

Q Sir, who ordinarily would make a public address announcement?

A The usher in the announcement booth.

Q Who would ordinarily post the track change?

A The usher.

Q When you called Mr. King at 6:56 you told him, didn't you, that you took Mr. Harris out of service for failing to do his duties?

A Right. I was still a little upset.

Q Because he didn't call out the track change and never informed anybody?

A That's right.

Q Then you called Mr. Dixon--Mr. Dixon called you back, didn't he, about 7:12?

A Right.

Q At that time you told a slightly different reason that you had taken Mr. Harris out of service, didn't you?

A I don't recall the exact conversation. I didn't read it all.

Q But you stated--

A I was still upset, my words were still mixed up.

Q You told him at 7:12, about 20 minutes after the situation, that you told Mr. Harris if you didn't want to be yelled at you go home, he is out of service. That is the reason you gave Mr. Dixon and he said, "That is okay," is that correct?

A Actually it is insubordination.

Q Is that the conversation you had with Mr. Dixon?

A That is the conversation I had.

Q Mr. Dixon said, "So let's prove a point with Mr. Harris."?

A That is right.

Q You said, "That is what I am going to do, I took him out."

A Right.

Q Did you prepare a report for Mr. Gaynor on this incident?

A I did, approximately after the commuters--approximately 9:30 a.m. that morning, quarter to ten.

Q Did you in this report put in the fact that Mr.

Shearer had come in and told you that Mr. Harris had in fact informed him to make the track change announcement?

A No, it wasn't necessary.

Q You didn't think it was important?

A It wasn't pertinent to the fact that the man did not do his duty.

Q Who, Mr. Shearer, or Mr. Harris?

A Mr. Harris didn't see to it that Mr. Shearer did his duty.

Q You didn't think that it was an important thing to put in your report to Mr. Gaynor?

A Of course not.

Q Did you ever tell Mr. Gaynor that Mr. Shearer said that?

A Yes, I told Mr. Gaynor verbally. I said he tried to cover up for Mr. Harris in my opinion, that is what it was.

Q Sir, on your examination before trial which was last week--do you recall that?

A Yes, I remember.

Q I asked you with whom you had discussed this incident, do you remember that?

A Discussed the incident with?

Q Yes.

A Yes.

Q You told me that you discussed it with Mr. King and Mr. Dixon and Mr. Gaynor.

A Right.

Q You didn't tell us you discussed it with Mr. Shearer, did you?

A I didn't discuss anything with Mr. Shearer. Mr. Shearer told me, he came in and said he made a mistake and I said, "All right, go do your job." And that was it.

Q You did not mention that you discussed it with Mr. Shearer to me when I asked that.

A Was that a discussion? You call that a discussion?

Q You didn't mention it, did you, sir?

MR. STOKES: He is arguing with the witness.

MR. McGANNEY: I will have to put in the deposition then.

THE COURT: I think I can see the answer to that question.

Q You have been the terminal superintendent since December 1973?

A Approximately, right.

Q In that time up until August 1, 1974, you didn't file any written reports about Mr. Harris, did you?

A That I couldn't answer.

Q Sir, from December 1973 to August 1974, you didn't have very much personal contact with Mr. Harris, did you?

A Will you repeat that?

Q From the time of December 1973 to August 1974, you didn't have very much personal contact?

A Not personally, no. But indirectly, yes.

Q But you were working different shifts, he worked the night shift and you come in at 7:00 in the morning and he was going off?

A Right.

Q You heard on the morning of August 1st that Mr. Harris had not attended the book of rules class?

A Right, the examiner called me up.

Q You filled his job that night?

A I didn't fill his job, the assistant superintendent of passenger filled his job.

Q Didn't you give instructions to Mr. Partridge to send Mr. Harris home that night?

A Which I got from Mr. Steele, the assistant superintendent of passenger.

Q But you did give instructions to Mr. Partridge?

A Right, relayed instructions.

Q You got them from Mr. Steele?

A Mr. Steele.

Q Normally you would seek an explanation from a man if he missed an assignment, is that correct?

A Definitely.

Q If a man oversleeps you give him another chance?

A If a man oversleeps, what kind of an incident?

Q You gave Mr. Traynor another chance.

A Definitely, because I knew where he was, I was able to contact him.

Q You didn't get Mr. Harris before you filled in his place, did you?

A Mr. Harris failed to inform us of his whereabouts, we were unable to get ahold of him, we didn't know if Mr. Harris was dead, in the hospital or in some type of accident or had family difficulties.

Q Mr. Traynor didn't contact you, you contacted him?

A We tried to contact Mr. Harris also by phone.

Q You did?

A Yes, we did.

Q Did you think this an important factor in this situation, sir?

A We got ahold of Mr. Traynor by phone.

Q Did you think it was important that you try to reach Mr. Harris?

A Definitely it was important. We wanted to know what the circumstances were that he missed the book of rules.

Q If you write a report on a situation you put anything in in that report that is important,don't you, sir?

A Well more or less, yes.

Q I show you a memo of August 5, 1974, Exhibit 13, and ask you if that is your report on this particular incident?

A Yes, this is my report.

Q There is nothing in that report that you tried to reach Mr. Harris, is there, sir?

A No, that I tried to reach Mr. Harris, no.

Q After this incident you rescheduled Mr. Harris' class, did you not?

A I did not reschedule it. Mr. Greer rescheduled the classes when he was able to.

Q Did you personally send a note to Mr. Harris rescheduling the class?

A Generally it is Mr. Gaynor or Mr. Charles O'Brien who was in the place of Mr. Gaynor upstairs in

the office at that time.

Q Did you write a note?

A No, I did not.

Q Did you sign it, sir?

A No, I did not. I don't think so.

Q I show you Exhibit 8. Is that your signature on Exhibit 8, sir?

A Yes, this is. I am wrong, I did write it. Mr. Gaynor was on vacation, I guess.

Q You arranged for Mr. Harris' rescheduling of the examination, is that correct?

A I did not arrange it. Mr. Greer informed me of the day he was to report and then I told him formally through a letter what day he was to report.

Q Then subsequently you heard Mr. Harris failed that examination, was taken out of service, is that correct?

A He was not taken out of service, he was held out of service until he passed it. That is what happens to any supervisor.

Q Then you heard that Mr. Harris was back in service at a later time?

A Yes, after he passed the book of rules.

Q Do you recall how that came about?

Q When did you go to Babylon?

A I don't have the exact date.

Q The middle of 1971?

A I haven't the slightest idea. I can't tell you the exact date. It was done verbally, it wasn't done in writing, no date on there. I was to report to Babylon such and such a time on such and such a date.

Q It wasn't the first day of 1971, was it?

A No, I couldn't say.

Q Wasn't there a lot of talk around the terminal about the fact Mr. Harris had taken the Railroad to the Human Rights Commission at that time?

A I don't know of anything about Mr. Harris' business with the Long Island Railroad. I am not one to indulge in that kind of talk.

Q You didn't hear anyone else indulge in that kind of talk?

A No.

Q This December you had to take a book of rules examination?

A Yes.

Q That is a written examination?

A Written examination.

Q Was that the first time you ever had to take a

1 written book of rules examination?

2 A That was the first time I had taken it, yes.

3 Q You took a little extra tutoring for this, didn't you, sir?

4 A The book of rules?

5 Q Yes.

6 A I attended some class, not extra tutoring on this.

7 Q On Saturdays you went in and took a little--

8 A No, talking about tutoring for characteristics.

9 Q You took another written examination later on?

10 A Yes, I did.

11 Q The first time you had taken this examination?

12 A Yes, this was something new that the Railroad was upgrading the safety of the Long Island Railroad and wanted all the supervisors to be qualified in writing.

13 Q When was that, sir, in March?

14 A In March, right.

15 Q You flunked that examination the first time?

16 A The first time around, yes, I did.

17 Q You weren't taken out of service, were you?

18 A Not for the characteristics but if it was a book of rules I would have been left out of service.

19 Q Do you remember in your examination I asked you

B4

trainmaster and I believe it was January 1972 to full trainmaster, and in June 5, 1974 I was promoted to terminal superintendent, New York.

Q As terminal superintendent you have supervision over the assistant stationmaster, the assistant trainmasters and the ushers that are there, they are all under your jurisdiction, are they not?

A Yes, they are, sir.

Q Would you define basically what you consider to be the duties of an assistant stationmaster?

A The assistant stationmaster is responsible for the proper announcements to be made over the PA, the proper track assignments to be posted, and he also has to take care to make sure that the station is properly policed. Also he is a part of the operations team where he would be responsible for trains leaving on time.

Q What are the general other duties of an assistant trainmaster?

A An assistant trainmaster would encompass the operations and the manipulation of equipment, the checking of crews and making sure that the proper equipment moves are made in the station.

THE COURT: Don't you think you have enough explanation from the different witnesses as to the duties?

MR. STOKES: The only thing I am trying to bring out, your Honor, is that all the levels of our supervision have a thorough understanding of who does what and who has what responsibility.

THE COURT: All right.

Q Now, Mr. Gaynor, do you regularly check the stationmaster's log when you come in?

A Yes, I do.

Q Where is that kept?

A That is kept in the top drawer of the stationmaster's office in a cabinet. It is just below the counter of the stationmaster's office.

Q Is there a police log kept in Penn Station?

A No, there is not, sir.

Q When you get into your office in the morning, are there available to you police reports of any arrests or other things that are going on at the station at night from the Police Department?

A No, there are not.

Q When do you get police reports and how?

A I usually receive a copy of the report somewheres maybe two or three days later after the incident has happened which has been funneled through the channels of police headquarters at Jamaica, into

Mr. Dixon's office who is the assistant superintendent of operations, and is then sent back to the mails to me.

Q What do you rely upon to find out what has happened during the night in the station?

A I rely upon the assistant stationmaster's log.

Q Have you ever given instructions to the management personnel of Penn Station regarding efficiency checks?

A Yes, I have, sir.

Q What type of instructions have you given?

A I have told the management personnel that I expect efficiency checks from all management personnel which would be assistant stationmaster, stationmaster, assistant trainmaster, terminal trainmaster, in those categories.

Q Have these instructions been in writing or orally?

A These were putout. These were made in oral form, sir.

Q Yesterday one of your predecessors, Mr. Stewart, testified that when he was in charge of the station an assistant stationmaster was supposed to check with 204, the Movement Bureau, before taking an engineer or train crewman out of service.

Has there been any change of policy since you have taken over and been responsible for the station? Have you issued any other contrary instructions?

A Yes, I have, sir.

Q What are they?

A I have told stationmasters and assistant stationmasters that they do have the authority to take an individual out of service and if it's involved with an engineer, an engineer can be relieved and held there at the stationmaster's office in New York until an assistant road foreman of engines would come and actually take the man out of service. This is due commonly through a contractual agreement with the engineers' association, the union rather, that they had this agreement that nobody can take an engineer out of service other than an assistant road foreman of engines.

Q Personally how many assistant stationmasters --

MR. MC GANNEY: Can we find out whether this is oral or written?

THE COURT: I think he said oral.

THE WITNESS: Yes, it was.

MR. MC GANNEY: And the date.

THE COURT: When did you issue these instructions?

THE WITNESS: This was back in November of last

1 year, sir.

2 THE COURT: November 1974.

3 THE WITNESS: Yes, sir.

4 Q Approximately how many assistant stationmasters

5 are there on the Long Island Railroad?

6 A I would say right now I believe there are

7 approximately nineteen, sir.

8 Q Do you know how many of these are minority or

9 members of minority groups?

10 A Yes, I believe there are six men, sir.

11 Q At the present time, who is the assistant

12 stationmaster that would most likely fill the position

13 previously occupied by Mr. Harris?

14 A Mr. Charles Scott.

15 Q What is his race?

16 A He is a black man, sir.

17 Q Is Mr. Scott the most senior man of the extra

18 men?

19 A Yes, he is, sir.

20 Q Is he the most qualified?

21 A Yes, he is, sir.

22 Q Have you ever had complaints from any of the

23 other assistant stationmaster's about Mr. Harris being

24 late in relieving them?

25

A Yes, I have, sir.

Q Were these complaints in writing?

A Yes, they were, sir.

Q I show you a document dated 12/26/74 from Mr. Diaz to Mr. Partridge and I ask whether you have ever seen that document before.

A Yes, it is, sir. I have seen this report.

Q Is that a document that has been contained in the files under your jurisdiction and supervision?

A Yes, it has, sir.

MR. STOKES: I ask that it be marked, your Honor.

MR. MC GANNEY: I object to it. We don't have Mr. Diaz here and it's addressed to Mr. Partridge and besides that, it's totally irrelevant.

MR. STOKES: It comes from the witness' files, your Honor. Mr. Partridge is his subordinate.

THE COURT: I will receive it.

*** (Defendants' Exhibit AA received in evidence.)

Q I show you another document addressed to you from Mr. Diaz dated September 11, 1975 and ask whether you have ever seen that before.

A Yes, I have, sir.

Q Is this contained in the files under your supervision and jurisdiction?

A Yes, it is, sir.

MR. STOKES: I ask that that be marked, your Honor.

MR. MC GANNEY: Same objection.

THE COURT: I think we will let it in under the new rules of evidence.

MR. STOKES: This is directly to the witness.

THE COURT: I think 803 lets everything in.

MR. MC GANNEY: I don't think it's in the regular course of business and it is irrelevant to this proceeding.

*** (Defendants' Exhibit AB received in evidence.)

4-2 THE COURT: I haven't looked at it but I suspect it substantiates what his direct testimony was, that he had received complaints about Mr. Harris being late in relieving other people.

MR. STOKES: Exactly, your Honor.

Q Mr. Gaynor, during the past year has it been a regular thing for one or more of the East River tunnels to be taken out of service at night for work purposes?

A Yes, it has, sir.

Q About how often or with what regularity are they taken out of service?

A I would say on an average of four, five times a week.

Q And this has been going on for what period of time?

A I would say now since I have been tunnel superintendent of New York, since last June.

Q For at least over a year?

A Yes, it has.

Q So that the management personnel in the station are quite accustomed to dealing with this and it's almost really a normal practice and procedure with them?

A Yes, it is, sir.

Q Last September did any of the other assistant stationmasters under your jurisdiction take and fail a rules examination?

A Yes, they did, sir.

Q What happened to them?

A They were held out of service until they went to take the examination, sir.

Q And until such time as they passed it?

A Right.

Q What happened on September 12 according to your

1 incidents that had happened, a chain of events that did
2 take place up until this morning, September 12. And
3 different things that had transpired over that period
4 of time since last October up until now, I took that
5 into consideration along with Mr. Harris' capabilities,
6 his attitude, and I came to the decision that I believed
7 Mr. Harris was incapable of continuing on as assistant
8 stationmaster.
9 Q After receiving Mr. Rizzacasa's written report
10 and making your decision to hold Mr. Harris out of
11 office or out of his position and advising him to
12 exercise his seniority as an usher, did you consult
13 Mr. Rizzacasa at all again?
14 A No, I did not.
15 Q Did you consult anyone?
16 A No, I did not consult anybody, except after
17 this was done at that particular time -- in that area, no.
18 Q After you made your decision, did you advise
19 anyone as to what the decision was?
20 A Yes, I did, Mr. Dixon.
21 Q As I understand your testimony, your decision
22 was based upon Mr. Rizzacasa's report upon the various
23 items that were contained in Mr. Harris' file over the
24 past year and your own general observations of
25

Mr. Harris' attitude and performance of his duties.

A That is correct, sir.

MR. MC GANNEY: I don't recall the last part to be the witness' testimony. I object to the question.

MR. STOKES: I believe the witness testified that his decision was based on his attitudes.

THE COURT: Yes.

Q After advising Mr. Dixon of your decision, did you then have occasion to write Mr. Harris a letter?

A Yes, I did, sir.

Q I show you Exhibit 14 in evidence, Mr. Gaynor. Is that the letter you wrote to Mr. Harris?

A Yes, it is, sir.

Q Did you subsequently write a letter to Mr. Harris several days later?

A Yes, I did, sir.

Q What did you advise him in that letter?

MR. MC GANNEY: Can I see the letter?

MR. STOKES: Is the letter present?

THE COURT: Do you have a copy of it?

MR. MC GANNEY: I have never seen or heard of the letter.

THE COURT: Do you have your carbon copy?

MR. STOKES: No, I don't, your Honor. I thought

Mr. Notolli who was their manager and he said he interviewed the clerk who at that time was working in Greak Neck, sir.

Q Did you also have occasion to call Mr. Lansperg and ask him for a report?

A Yes, I did, sir.

Q When was that?

A I believe that was that same afternoon, sir.

Q This was the afternoon of the 12th?

A Yes, sir.

Q When did you receive that report?

A I believe it was sometime like four or five days later, sir.

Q During the interim from the time you called Mr. Lansperg and asked him for his report until you received the report, did you have any discussions with Mr. Lansperg?

A No, I didn't, sir.

Q During the past year, has it been your practice to have or to write one or more memorandums of criticisms to Mr. Harris every day?

A I would say over a period of time there were maybe several, maybe ten different times that I did write to Mr. Harris memos of inquiry trying to find out what

Mr. Rizzacasa, were they?

A No, sir.

Q Mr. Gaynor, do you read the log book every day?

A I will say practically every day.

Q It's an important part of your duty?

A That is a basic part of my duty, yes.

Q It's important for you to review that information to make decisions on the railroad?

A Yes, sir.

Q There would never be a period of time when you go a week or so without reading the log book, would there?

A Not a week at a time, no.

Q You would be pretty sure to see it --

A Probably every morning.

Q You take careful note of everything written in that log book because it's special information, isn't that true?

A Pertaining to that particular day, yes.

Q What time do crews usually appear prior to a train's departure, Mr. Gaynor?

A The reporting time is fifteen minutes, sir.

Q So if there was something wrong with a piece of equipment, a member of the crew wouldn't be likely to detect that error until within fifteen minutes prior

1 to that train's departure, isn't that true?

2 A The crew itself, yes, sir.

3 Q When does a door light usually go on, Mr. Gaynor?

4 A When all the doors in the entire train are

5 closed.

6 Q When do you usually close the doors on the train?

7 A At the leaving time, sir.

8 Q That is just prior to departure?

9 A That is right, sir.

10 Q So the first time you would know whether or not

11 a door light was functioning was just prior to a train's

12 departure.

13 A Unless it was reported beforehand.

14 Q Unless reported beforehand, but in the normal

15 circumstance --

16 A In the normal circumstance, yes, it would be

17 at leaving time.

18 Q So the fact a train might have been sitting

19 in a station for two and a half hours prior to departure

20 time wouldn't be very relevant to whether or not someone

21 had discovered the door light was not functioning

22 properly, would it, sir?

23 A There are times when car inspectors do check

24 the equipment, yes.

25

Q My question is, if a car had been sitting in the station two and a half hours and the door light is not normally likely to go on until the doors are shut, and the doors are not normally shut until a minute or two prior to departure, the fact the train had been sitting on the ramp all this time --

A There are times here now when this equipment is brought up into the station and the doors in its entirety are closed ten minutes before departure time and at this time here now the car inspector does make, or is supposed to make, his checks and find out if the certain brake functions and certain door lights and all are properly in working order.

Q This would be ten minutes prior to departure time?

A In other words, if the equipment can be there for an hour and a half sitting in the station as you so stated, but there are car inspectors and they are required to check this equipment also for malfunctions in the brakes, door lights, gauges, any other particular area where there would be a problem involved.

Q If a car inspector didn't determine anything and the problem occurred after the car inspector took a look at the train and checked out the equipment, then

the time this door light not functioning being detected would likely not be detected until a train just pulled out?

A That is correct, sir.

end tk. 4

Q Mr. Gaynor, are you upset when a train leaves the station late?

A Pardon me?

Q Are you upset if a train leaves the station late?

A Yes, I am, sir.

Q A train one or two minutes late, that is an unusual occurrence?

A No, one or two minutes can be accepted, sir.

Q How about six or seven minutes?

A That can even be accepted.

Q Nine minutes?

A Becomes a little too much. Anything up to, I would say we usually give ourselves about five or six minutes and make allowances up to maybe six minutes and a train, if there is a problem or we have to change equipment or use other manipulations to get a train out, we allow about six minutes. That is the amount of time to have the crews understand as to what manipulation, what particular procedure they are going to use in moving that equipment and it is usually an ample amount of time to walk somebody across the platform or the station, it depends on how many people you have in that time to take over to another platform.

Q Anything over six minutes would be intolerable?

A Yes, unless there is some other extraordinary experience.

Q Do you know a man named Wership?

A Yes.

Q An engineer?

A Yes.

Q He was the subject of some disciplinary action around November 1974, isn't that a fact?

A That is correct.

Q He was taken out of service for a day and lost a day's pay for an act of insubordination?

A I believe he was relieved for one day, right.

Q Do you remember if Mr. Harris was involved in that incident?

A Yes, he was.

Q A subject of your report?

A Yes.

Q Mr. Harris wasn't taken out and deprived of a day's pay as the result of that?

He wasn't taken out of service as a result of that activity on that day?

A No, sir.

Q That activity concerned Mr. Wership's failure to take a train out of the station, isn't that true?

A That is correct.

Q Mr. Gaynor, you were speaking of a series of written reprimands that you issued to Mr. Harris during the course of your time as terminal superintendent.

You usually wrote these up in letter form?

A Yes, in a letter form.

Q A copy would automatically go to Mr. Harris?

A That is correct.

Q Did you usually forward a copy on to your superiors?

A Yes, I do.

Q Mr. Dixon usually got a copy?

A That is correct.

Q Mr. Steele usually got a copy?

A Yes, sir.

Q Anybody else normally get a copy of these sort of matters?

A Mr. Platz and Mr. J.C. Valder, vice president of transportation.

Q You also sent copies of these reports to Mr. Harris' personnel file, didn't you?

A That is right.

Q Prior to sending these reports to all these individuals, making these reports a permanent part of Mr.

Harris' personnel file, you never discussed any of the incidents which were the subject of the report with Mr. Harris, did you?

A No, sir.

Q These became part of his permanent record before you ever heard of Mr. Harris' explanation as to any of these activities?

A Yes. His actions spoke for me, that is why I do this.

Q You never forwarded a copy of Mr. Harris' responses to any of his superiors, did you?

A No, sir, just made a part of my file.

Q I believe you said you personally exercise your authority to take Mr. Harris out of service, did you, sir?

A Yes.

Q I show you Plaintiff's Exhibit 14, this is a letter we are talking about in which you first advise Mr. Harris of the reasons for taking him out of service, isn't that correct?

A Yes, sir.

Q I wonder if you would read the first two paragraphs for me, Mr. Gaynor.

A "Dear Sir: In accordance with your insubordina-

1 tion to Mr. L.J. Rizzacasa, terminal trainmaster as per
2 his direct order to you to make proper train changes and
3 announcements affecting train 708 on this date and your
4 reply to Mr. Rizzacasa,'Don't tell me what to do, you got
5 trainmasters to take care of these duties,'this being
6 your responsibility as assistant stationmaster should
7 have complied but you refused to do so.
8 "Effective 7:00, September 12, 1975 you are
9 directed to exercise your seniority rights as an usher."
10 Q There is nothing else relevant in any of the
11 text of that letter, is there, Mr. Gaynor?
12 MR. STOKES: The document is in evidence.
13 Q Mr. Gaynor, there is nothing in there that says
14 anything about a history of misconduct in the past as
15 being grounds for considering Mr. Harris being taken out
16 of service, is there, sir?
17 A No.
18 Q In fact, you never said anything to Mr. Harris
19 about a past history in connection with taking him out of
20 service?
21 A No, but I would like to add right now--
22 Q Just answer yes or no, and if your attorney
23 thinks there is something--
24 THE COURT: Let the letter speak for itself,
25

Mr. Sollis.

Q Mr. Gaynor, prior to sending this letter you had no response from Mr. Harris personally, had you?

A No, I hadn't.

Q You didn't have his version of what happened before you, did you?

A No, like I spoke before, about his actions, that was enough in my mind alone with what had taken place.

Q Let us focus on the incident of September 12, 1975. You had no discussion of that incident with Mr. Harris?

A No, I did not.

Q You hadn't spoken to Mr. Lansperg who was in the office when that occurred prior to taking Mr. Harris out of service?

A No, I had not.

Q You hadn't spoken to Mr. Shearer, the usher, in your office when the incident occurred?

A No, I had not.

Q You spoke to Mr. Rizzacasa?

A Yes, I did.

Q And Mr. Rizzacasa was the first to tell you about the incident?

A That is correct.

Q He also gave you a written report of his version of what happened?

A Yes, sir.

Q That incident makes no reference to the fact that Mr. Shearer came in and told Mr. Rizzacasa that Mr. Shearer thought the incident was his fault?

A No, sir, still just a lack of responsibility on Mr. Harris' part.

Q But the answer to my question is Mr. Rizzacasa never told you nor did his report focus on the fact that Mr. Shearer had made a statement to him, isn't that a fact?

A No, sir.

Q That is not a fact?

THE COURT: The answer is yes.

Q The answer was yes?

A Yes.

Q Mr. Gaynor, prior to September 12, 1974, you were aware that Mr. Harris was involved in a lawsuit against the Railroad?

A I was not aware of it, no, sir.

Q Do you recall sometime in August of 1974 when Mr. Harris was removed from service by the Railroad for failing a book of rules examination?

constitutes irreparable injury. I believe there is one decided by Judge Weinfeld in this District.

THE COURT: There is a Second Circuit intimation with respect to that but that is what I think are the main areas of the legal propositions involved.

Anything else?

MR. McGANNEY: Well, your Honor, I simply do want to make a motion to renew our motion for a temporary restraining order or for a preliminary injunction pending the final determination of this matter, to have Mr. Harris reinstated in his job on the basis of the record and briefs that I have filed.

THE COURT: I will reserve decision on that. I don't need a memorandum with respect to that, I can give you an oral decision with respect to that and inform you of that probably Monday.

MR. McGANNEY: I will be in the Supreme Court but will you inform Mr. Holwell?

THE COURT: I will see that the information gets to you.

MR. McGANNEY: Thank you, your Honor.

THE COURT: I want to be sure that the Railroad will agree to extend the 29 or 30 day period should my decision run beyond that and I would prefer, in the event

that I find in favor of the Railroad on a preliminary injunction, to extend for a period of time, perhaps 15 days--

MR. STOKES: I think I indicated on the record yesterday, your Honor, the extension of time is within the discretion of the Railroad and most assuredly would extend it in any reasonable way to cooperate with the Court.

THE COURT: I have two ways I would like it extended beyond the time, certainly beyond 15 days beyond the time that I render my decision in the event it is adverse to Mr. Harris. And I would like you to consider in the event the decision is rendered adverse to Mr. Harris extending it beyond the time in connection with that appeal that might be submitted to the Court of Appeals.

MR. STOKES: I would agree to that, your Honor.

THE COURT: Either side has the right to appeal from my grant or denial of the injunction here and the Railroad has agreed to that.

MR. STOKES: Absolutely, your Honor. Just so long as the record is clear we are not preventing Mr. Harris from coming to work, this is his own choice.

THE COURT: I don't want, if this matter is litigated--

[2]
rdsas

MR. McGANNEY: Plaintiff is ready.

MR. STOKES: Defendant is ready.

Your Honor, in accordance with our conference yesterday and at the request of the Court, Mr. Peterson has had his files checked and I have them available and he is available to explain what they are.

THE COURT: You want to take the stand, Mr. Peterson?

R O B E R T E. P E T E R S O N, called as a witness on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STOKES:

Q Mr. Peterson, following the conference here in court yesterday, did you arrange to have the files of your department checked, the medical files?

A Yes, I did --

MR. McGANNEY: Could we have Mr. Peterson's position with the railroad?

Q Mr. Peterson, will you state your position with the railroad.

A I am the superintendent of personnel management, and in that capacity I report directly to the president of